

INDIAN EDUCATION IN CANADA:
IMPLEMENTATION OF EDUCATIONAL POLICY, 1973-1978

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by

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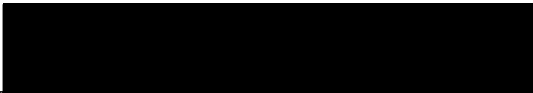
TITLE OF THESIS INDIAN EDUCATION IN CANADA: IMPLEMENTATION OF EDUCATIONAL
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ABSTRACT

This thesis examines the political interaction between the Canadian federal government and the Indian Nations within Canada in the sphere of educational policy implementation from 1973 through 1978. In 1973, the federal government adopted a new educational policy for Indians which was based on the National Indian Brotherhood's policy document, Indian Control of Indian Education, and which incorporated the principles of parental responsibility and local control. This new educational policy was a radical change from previous educational policy, which had incorporated principles of assimilation into mainstream Canadian society and widespread integration into provincial school systems.

The first five years of implementation of the new educational policy transpired within the context of a mutually agreed upon process of "partnership" and "consultation". On the national level, the Joint Cabinet/National Indian Brotherhood Committee forum was utilized to raise the question of an Indian right to education. Legislative changes to the Indian Act regarding provision of educational services to Indians were sought through a joint consultative Indian Act revision process. In conjunction with the exploration of these long-range methods of policy implementation, a more immediate method of educational policy implementation occurred through the transfer of education programs or program aspects to Band Councils. Program transfer guidelines served as the primary instruments for effecting this method of policy implementation. The initiation of a Cultural/Educational Centres Program under the auspices of the Department of Indian

Affairs and Northern Development also provided an avenue for educational policy implementation.

In spite of the intended mode of educational policy implementation, claims and counterclaims regarding the consultative/participatory nature of implementation of Indian control of Indian education resounded throughout 1973-1978. The culmination of misunderstandings, misinterpretations and frustrations regarding "consultation" in policy implementation was the unilateral withdrawal of the National Indian Brotherhood from the Joint Committee process in April of 1978. The value of jointly pursuing legislative change to the education sections of the Indian Act came into question as well among Indian leaders in 1978, in light of the perceived threat to aboriginal and Indian rights in general resulting from Prime Minister Trudeau's tabling of Bill C-60, an Act to Amend the Canadian Constitution.

The dissonance during 1973-1978 between the Indian Nations and the federal government regarding the consultative/participatory nature of educational policy implementation can be partially understood in terms of a failure to clearly differentiate between the actual process of consultation and the unilaterally written products of consultative meetings. Organizational aspects of the National Indian Brotherhood also impinged on the manner in which it could participate in the consultative forums. Federal government - Indian Nation interaction in the sphere of educational policy implementation intermeshed with the overall political interaction between these two entities in the continual struggle to define the political relationship between Canada and the indigenous Indian Nations.

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CHAPTER 1

IMPLEMENTATION OF INDIAN CONTROL OF INDIAN EDUCATION: 1973-1978

Introduction

Federal legislative jurisdiction for "Indians, and Lands reserved for the Indians" was determined by virtue of Section 91, Head 24 of the British North American Act, 1867. By virtue of this Constitutional prerogative, the federal government has structured the provision of educational services to Indians, contemporarily through Sections 114 through 123 of the Indian Act. Historically, diverse implicit principles have guided federal policy regarding the provision of educational services to Indians. From the early 1950's, the basic tenet was the integration of Indians into provincial educational systems.¹ However, in 1973, when the federal government accepted in principle the National Indian Brotherhood's policy document, Indian Control of Indian Education, it formally adopted an educational policy which explicitly incorporated the principles of parental responsibility and local control.² This shift in federal educational policy for Indians in 1973 ostensibly heralded in an era where Indians could become active participants in effecting their own educational experiences.

The policy document Indian Control of Indian Education called for "a radical change in Indian education."³ Many specific educational areas requiring "attention and improvement" were enumerated under four headings: responsibility, programs, teachers

and facilities. However, the policy document did not include a plan for implementation of the principles, goals and directions contained therein. Both the government and the Indian Nations agreed that implementation of the new educational policy should transpire in a climate of "partnership", "cooperation" and "consultation".

In the spirit of "consultation" and "partnership" in the overall political arena, a unique national forum for political interaction between the federal government and the Indian Nations was formalized in 1974. This forum was the Joint Cabinet/National Indian Brotherhood Committee mechanism. An integral aspect of this Joint Committee mechanism was a consultative process for Indian Act revision. Through both of these historically unique elements, the federal government and the Indian Nations sought to establish a legislative base for implementation of Indian control of Indian education.

While the long-term structure for implementation of educational policy was pursued at the Cabinet level, the Department of Indian Affairs and Northern Development aspired to implement Indian control of Indian education in a more immediate sense, through the transfer of education program management and administrative functions to Band Councils. The Department determined as integral to the transfer of education programs to Band Council management, the development of program transfer guidelines for both local government functions (the D-series guidelines) and for education program management (the E-series

guidelines). The Department espoused the precept of consultative/participatory implementation of educational policy as well.

In spite of the professed mode of consultation and partnership in education policy implementation , throughout 1973 -1978, Indian leaders and Indian organizations continued to counterclaim that educational policy was being effected unilaterally by the Department of Indian Affairs and Northern Development, without adequate consultation or participation of Indian peoples. By mid-1978, the National Indian Brotherhood denounced the Joint Cabinet/National Indian Brotherhood Committee as "time-wasting gab sessions", citing the inability of the Joint Committee process to produce any major policy decisions in its four-year existence.

Claims and counterclaims regarding the nature of "participation" and "consultation" characterize the initial five years of implementation of Indian control of Indian education. This thesis presents an historical analysis of political interaction between the federal government and the Indian Nations during the years 1973 to 1978 in terms of avenues explored for implementation of Indian control of Indian education. By breaking down this political interaction into its component parts, an understanding of the apparent discrepancies in interpretation of the participatory/consultative nature of educational policy implementation is gleaned.

Statement of the Problem

The primary question examined in this thesis is:

What was the nature of interaction between the federal government and the Indian Nations regarding implementation of the policy of Indian control of Indian education during the timeframe 1973-1978?

Purpose of the Study

The study of history for its own sake is "generally accounted a platitude."⁴ The Joint Cabinet/National Indian Brotherhood Committee was a historically unique national forum for political interaction between the federal government and the Indian Nations. The consultative Indian Act revision process, one component of the Joint Committee process, was also historically unique in its attempt to amend legislation through direct participation of the people for whom that legislation was framed. The documentation of these two historical events is exigent. This study provides historical documentation of one facet of these two events, through its focus on implementation of federal policy for provision of educational services to Indians.

It is further recognized that "a sound acquaintance of the prehistory of a situation or problem does illumine them and does assist in making present decisions...."⁵ Indian control of Indian education continues to be the stated policy of the Canadian

Government with regard to effecting the educational experiences of Indians within Canada. This policy also continues to be the affirmed policy of both the current federally recognized national association of Indian Nations (the Assembly of First Nations) and the current Treaty Nation association (the Prairie Treaty Nations Alliance). These political entities are yet actively engaged in defining procedures for the implementation of Indian control of Indian education. Furthermore, the formal mechanism for federal administration of Indian affairs, the Indian Act, remains basically unchanged regarding the administration of education for Indians. Finally, many of the educational guidelines produced by DIAND in the 1970's yet serve as instruments of educational policy implementation.

This study, as an historical analysis of the Indian Nations - Canadian Government relationship in the educational sphere in the time frame 1973-1978, brings into focus many current issues in Indian education in Canada. It illuminates the roots of the current Indian Nation perspective of Indian education as an aspect of Indian government. It contextualizes the contemporary critical issue of education as a Treaty right. Most importantly, however, this study depicts a unique historical experiment in joint Canadian - Indian Nations structuring of implementation of Indian control of Indian education.

Delimitations

1. The five-year period, 1973-1978, is the primary temporal focus of this study.
2. This study is delimited to discussion of federal educational policy for Indians residing in Canada, exclusive of those residing in the Yukon or the Northwest Territories.
3. This study is delimited to interaction in the educational sphere between the federal government and the Indian Nations as represented by the National Indian Brotherhood and as represented by the Provincial Indian Organizations. It does not purport to examine interaction between the federal government and individual Indian Nations to any extent beyond that by which they are subsumed under the provincial and national Indian organizations.

Limitations

1. Primary reliance on accessible written or printed material may limit interpretations extracted in this study.
2. Primary source material is accepted by the writer as being authentic and representative of the organization which produced it.
3. This study is limited by the incomplete availability of statistical information regarding provision of educational services to Indians during 1973 through 1978.

4. Interpretation of data is limited by the ability of the researcher to recognize and transcend personal bias and/or prejudice in attitudes, beliefs and values.
5. This study may be limited in that it is a study of the recent past; general arguments against any historical study of the recent past include the notions that "impartiality is exceptionally difficult when describing and judging recent events and live issues" and "true perspective as to what is important can be the product only of the long-run."⁶
6. This study may be limited by the lack of comprehensiveness of resource material considered by the researcher regarding the broader political, economic and socio-cultural relationship between Indian Nations and Canada beyond that which seems to directly impinge on the sphere of educational activity.

Definition of Terms

Band: Body of Indians as defined in the Indian Act. R.S., c.149, s.1 "(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September, 1951, (b) for whose use and benefit in common, moneys are held by Her Majesty, or (c) declared by the Governor in Council to be a band for the purposed of this Act;"

Band Council: As defined in the Indian Act. R.S., c.149, s.1 to mean "(a) in the case of a band to which section 74 [Election of Chiefs and Band Councils] applies, the council established pursuant to that section, (b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;"

Band School Committee: Local educational authority as determined by the individual Band

Department of Indian Affairs and Northern Development (DIAND): A branch of the Canadian federal government which has a responsibility for interaction with Indian Nations by virtue of s.91(24) of the Constitution Act, 1982 and the Indian Act, R.S., c.149, s.1. This branch is currently called Indian and Northern Affairs Canada (INAC).

Indian: The legal definition is herein applied: "'Indian' means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian." (Indian Act R.S., c. 149, s.1)

Indian Control of Indian Education: Policy document produced by the National Indian Brotherhood in 1972

Indian control of Indian education: Conceptual phrase to be distinguished from the policy document of the same name by use of lower case letters for "control" and "education"; the meaning of this phrase will be a primary consideration of this study

Indian Nations: Refers to Indian Bands collectively. In this study, the terms are used interchangeably. "Band" (often as "band") was the more common term of reference during the 1970's. A "nation" is defined as "a community of people with its own territory and government" (Opekokew, 1980)

Indian Treaties: Compacts or agreements signed between representatives of the various Bands and/or tribal groups and representatives of the British Crown

Joint Cabinet/National Indian Brotherhood Committee: A joint cabinet level committee operative 1974 through 1978; also referred to as the Joint National Indian Brotherhood/Cabinet Committee; the term "Joint Committee" is used interchangeably with either of the full committee titles

National Indian Brotherhood (NIB): "The organized, federal-level political voice of status Indians" (Ponting & Gibbons, 1980, p.195) operative from 1968 to 1982, at which time the Assembly of First Nations (AFN) superseded it.

Provincial and Territorial Organization (PTO): Member units of the National Indian Brotherhood, including "The Union of British Columbia Indian Chiefs, The Indian Association of Alberta, The Federation of Saskatchewan Indians, The Manitoba Indian Brotherhood, The Chiefs of Ontario (representing Grand Council Treaty #9, Grand Council Treaty #3, Union of Ontario

Indians, and The Association of Iroquois and Allied Indians), The Confederation of Indians of Quebec (formerly the Indians of Quebec Association), The Union of New Brunswick Indians, The Union of Nova Scotia Indians, The Lennox Island and Abegweit Bands of Prince Edward Island, The Yukon Native Brotherhood, and The Dene Nation (formerly the Indian Brotherhood of the Northwest Territories)." (Ponting & Gibbons, 1980, p.244)

Reserve: As defined in the Indian Act, R.S., c.149, s.1, "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of the band;"

Method

This study is an historical analysis of the political interaction between the Canadian Government and the Indian Nations in the sphere of education during the years 1973-1978. In order to understand the nature of that interaction, it became necessary to break the "interactional sphere" into component parts. The primary interactional dimensions which emerged were the federal government-National Indian Brotherhood interaction in the Cabinet-level Joint Committee process; the Department of Indian Affairs and Northern Development - National Indian Brotherhood interaction in the context of Departmental guidelines issued during 1973-1978; and the Department-Indian interaction in the evolution of the Cultural/Educational Centres Program. These interactional dimensions formed the basis for chapters in this thesis.

The researcher found many intricacies to be present in the data analysis phase of this thesis. The difficulty of breaking down human interaction into divergent forums is compounded when some participants interact in all forums, others only in one or

two, and when participation is continuous for some and intermittent or brief for others. In situations of concurrent forums of interaction, it must be assumed that happenings in one arena will affect the attitudes of participants in other interactional contexts, especially if some of the same people constitute both forums of interaction. When the element of intercultural interaction is added, determining the "nature" of interaction becomes even more complex. These were some of the inherent difficulties of analyzing the political interaction which comprised the basis of this study.

In determining the "nature" of political interaction, the researcher looked not only for events of interaction but also for interpretations of those interactional events by the participants. The "quality" of interaction was viewed in terms of concepts such as participant satisfaction, interactional consonance, and congruity in participants' interpretations of the interactional event.

The data collection phase of this research consisted of the gathering of historical evidence: (a) sources of data were obtained; (b) semi-structured interviews were conducted; permission was sought and granted for audio-recording and subsequent transcription for analytical use. The data selection and analysis phase of the research, in addition to the intricacies described above, incorporated a process similar to "content analysis", whereby different versions of particular documents were examined for changes in content and meaning. Since updated

versions of documents were often claimed to be products of consultation, the documents were examined for positive change in content. Selection of data in general was based on the researcher's judgment of their being of either intrinsic or instrumental importance.⁷

Two factors complicated the presentation of data: the requisite to linearly present data which was implicitly intermeshed and concurrent; and, the unavoidability of utilizing a monocultural and bi-national (American/Canadian) interpretive framework.

Sources and Body of Data

The main body of data was provided by the following primary document sources: transcripts of the House of Commons Debates (Hansard); transcripts of the House of Commons Standing Committee on Indian Affairs and Northern Development; transcripts and records of meetings between Indian and federal political units; letters of correspondence between Indian and federal political entities (individual and organizational); Ministerial speeches; Indian leaders' speeches; annual reports of the Department of Indian Affairs and Northern Development (DIAND); DIAND federal policy documents and working papers; DIAND regional working papers; DIAND Communique; National Indian Brotherhood annual reports, policy documents and working papers; Provincial and Territorial Organizations' (PTO) working papers (i.e., Indian Association of Alberta; Federation of Saskatchewan Indians, etc.)

The examination of secondary source material, including newspapers, books and articles related to the area of study, and research reports from the Canadian federal government and from national and provincial Indian organizations augmented primary data.

CHAPTER ONE ENDNOTES

1. Indian and Northern Affairs Canada, Education and Social Development Branch, Indian Education Paper: Phase I (Ottawa, 1982), Annex C, 6-7.
2. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 24 May 1973, Issue Number 18, 5; Jean Chretien, Minister of DIAND, to George Manuel, President of NIB, 2 February 1973.
3. National Indian Brotherhood, Indian Control of Indian Education (Ottawa: NIB, 1972), 3.
4. W.H. Walsh, An Introduction to Philosophy of History, 3rd (rev.) ed. (London: Hutchinson, 1967), 41.
5. G.R.Elton, The Practice of History (Glasgow; Wm. Collins Sons & Co. Ltd., 1967), 67.
6. Louis R. Gottschalk, Understanding History: A Primer of Historical Method (New York: Knopf, 1950), 102.
7. William H. Dray, Philosophy of History (Englewood Cliffs, N.J.: Prentice-Hall, 1964), 32-33.

CHAPTER 2

IMPLEMENTATION OF INDIAN CONTROL OF INDIAN EDUCATION:
INITIAL PERCEPTIONS AND STATISTICAL REALITIESIntroduction

After the formal acceptance of the new educational policy for Indians by Minister Chretien in February, 1973, attention focused on the implications of and methods for transferring control of Indian education to Band Councils as outlined in Indian Control of Indian Education. The federal government as well as the Indian leaders brought forth ideas concerning the manner in which the implementation should proceed. This chapter first explores the initial ideas of two prominent spokesmen of the time regarding educational policy implementation: Jean Chretien, Minister of Indian Affairs and Northern Development, and George Manuel, President of the National Indian Brotherhood. Secondly, a statistical description is presented regarding some of the educational areas suggested by Manuel and Chretien in 1973 as requiring change in order to effect Indian control of Indian education. These areas include Band administration of education program funds; school committees and local education authorities; curriculum development; native language instruction; Indian participation in post-secondary education; construction of school facilities on reserves; Indian teachers; and Indian teacher education programs. Statistical changes in each of these areas are described as specifically as possible for the years 1973 through 1978.

Initial Perceptions of Policy Implementation:
Jean Chretien, Minister of Indian Affairs
and Northern Development

In his appearance before the House of Commons Standing Committee on Indian Affairs and Northern Development on March 6, 1973, Minister Chretien reported briefly on "basic trends in our Indian education policy today."¹ The Minister gave recognition to the National Indian Brotherhood's policy document, Indian Control of Indian Education.

It [Indian Control of Indian Education] will be used by my Department to round out future policy and shape future programs, all in keeping with the central aim of achieving an education partnership with the Indian people.²

The Minister expanded on the notion of "education partnership" with two key concepts: consultation and cooperation.

I have given the National Indian Brotherhood my assurance that the Department and I are fully committed to achieve the goals set forth in the Brotherhood's proposal. In continuing consultation and cooperation with the Indian organizations and Bands, my Department will be seeking to bring about the desired changes in education for the Indian people living on reserves and Crown lands.³

The Minister cited the recently approved Treasury Board Minute 715958, November 23, 1972, which enabled the Minister to extend his authority to Band Councils "to manage in whole or in part through Education Committees, education programs both in-school and post-school."⁴ The Minister described this program as being in "the same vein of policy evolution" as was Indian control of Indian education. He implied that this program was one avenue open for implementation of the new educational policy.

On request from Band Councils, my officials are ready to work out suitable arrangements for the transfer of control of education programs that Bands wish to operate, and for the training that Bands may require to operate these programs.⁵

The Minister concluded his brief commentary on educational policy trends by stating that there should be immediate focus placed on "suitable structures and mechanisms" for implementation with the understanding that federal responsibility for education remain in tact.

Perhaps the most important step we can take now, to bring about improvements in Indian education, is to establish suitable structures and mechanisms that will enable my Department to assist the Indian people in implementing the kind of programs and achieving the kind of results the Indian people want and expect. And this must be done without abdicating or appearing to abdicate the federal responsibilities in this all-important field.⁶

Delimitating the educational services for which the federal government was responsible subsequently proved to be the basis of discussion and negotiation between the government and the Indian Nations in the years 1974 through 1978.

Chretien's presentation to the Committee on March 6 included statements on other aspects of Indian policy, such as economic development, community affairs [local government], and land claims. He concluded his entire presentation by reiterating the federal government's "policy of participation." In referring to the many submissions he had received since 1970, such as a then recently received proposal from the National Indian Brotherhood regarding a consultation process "with Indian people in all parts of the country about the future of the Indian Act....the Red Paper of the Indian Association of Alberta; 'Wahbung', the position

paper of the Manitoba Indian Brotherhood; and the paper from the Association of Iroquois and Allied Nations,"⁷ the Minister stated:

This is what this Government understands by a policy of participation by people directly affected. This is how I view my responsibility for native people's affairs. This is what we mean when we insist that our policies and programs must be responsive to the wishes of the people they are intended to serve. It is the message I wish to convey in this statement throughout.⁸

The government's notion of "consultation" with Indians comprised in part a process whereby the Minister or the Department of Indian Affairs and Northern Development would consider and incorporate to varying degrees submissions made by Indian organizations or individuals into policy documents ultimately written by government representatives.

Minister Chretien's presentation to the Committee on May 24, 1973, included many of the same terms for description of federal educational policy for Indians as did his March 6 statement. Phrases such as "in dialogue with"; "in partnership"; "in consultation and cooperation with" appear in his opening remarks.⁹ The Minister outlined for the Committee a series of steps that had already transpired regarding what he perceived to be aspects of partnership in policy implementation.

...the Indian people and the Department together have developed instructional materials for a more meaningful curriculum; native instructors are teaching native languages in both reserve and provincial schools; increased numbers of four and five-year olds attend band-operated kindergartens; and over two hundred Indian social counsellors have been trained and are now employed assisting with the social problems encountered by students.¹⁰

Chretien then outlined six specific directions for immediate Department focus regarding educational policy implementation. He illustrated how he perceived the federal government's activity in these six areas to be a response to many of the changes called for by the Committee in its Fifth Report and by the National Indian Brotherhood in its policy document, Indian Control of Indian Education.

The six areas cited by the Minister were: increased involvement of Indians in school management and administration; consultation regarding transfer of programs to provincial school systems; the Cultural/Educational Centres Program; curriculum development; native language instruction; and increased attendance by Indians in universities. These six areas are hereunder summarized.

Band management and administration of the education program was to be implemented through the Treasury Board-approved program for transfer of education programs to Indian Bands (TB Minute 715958, November 23, 1972). A Department education staff member was available to assist in any transfer. Training in school board management and administration would be provided by the Department upon request. Funds would be available for Bands "to research and examine local education programs and to develop experimental and innovative projects."¹¹ It was again stated by the Minister that

In working out procedures the department will not act unilaterally and the onus will be on individual bands to decide how far and how quickly they wish to assume control.¹²

With regard to the relationship of Indian education to provincial school systems, the Minister made three points. There would be no transfer of federal education programs to provincial school systems without the clear consent of the Indian people involved; Band Councils could at any time negotiate new terms for existing tuition agreements with provincial school systems; and there must be methods sought, both legislative and otherwise, for increased Indian involvement in provincial school systems, including Indian representation on provincial school boards. The Minister qualified the second point in subsequently stating that consideration would be given to the budget limits of the Department in providing new federal schools in the event a Band wished to withdraw from a provincial tuition arrangement. Additional consideration would be given to the capital costs already invested in some provincial schools by the federal government. Finally, commitments to school boards would have to be respected. The Minister hinted that perhaps he would "have to say no" to some requests from Band Councils based on these considerations.¹³ However, "...when the agreements terminate, and before we sign new agreements, we will ask the Indians what they think about it."¹⁴ The Minister did not at this time elaborate on the nature of "asking the Indians what they think about it", i.e., whether Band Councils would function in an advisory capacity or as first-party signatories to joint school or tuition agreements.

The third area which was to be an avenue for policy implementation as stated by the Minister in his Committee

presentation was the Cultural/Educational Centres Program. The Minister offered his perception of the function of this program:

I see the Centres as places and programs in which the cultural heritage of native people will be restored, strengthened, and transmitted both to native people and to the total Canadian society. These Centres can also be a resource for new educational probes to make education for native people more relevant. If these goals are achieved, a very real contribution will have been made toward the development of the deserved pride and self-esteem of native people in Canada.¹⁵

The Cultural/Educational Centres Program remained operational throughout 1978.

In the area of curriculum development, the Minister outlined to the Committee some curriculum adaptations that had already transpired, including teaching units, curriculum kits, and Indian studies programs. He noted that many local curriculum committees had been formed by Indian people across the country and that Indian education resource centres existed in each Region "to assist schools in developing programs and materials for courses in Indian history and culture."¹⁶ Within this discussion area, the Minister also described the Department's plan to support teachers in provincial school systems to take courses in inter-cultural education. It was intended that by 1975 "all teachers in federal schools will have taken courses in inter-cultural education and native studies."¹⁷ A corresponding increment in native studies programs offered by universities was presumed by the Minister.

Increased native language instruction in schools and more training programs for native language instructors were envisioned as additional avenues for implementation of educational policy.

In tandem would be the provision of specialized teacher training programs "to increase the number of qualified Indian teachers."¹⁸ A re-examination of financial support for Indians to attend these "specialized" teacher training programs, as well as other university programs, was implicit in this avenue of educational policy implementation.

Accordingly, continued and enhanced federal support for Indian students to attend university was the sixth area discussed by the Minister as an aspect of policy implementation. He noted the jump in university attendance by Indians from about 150 in 1967 to almost 800 in 1973. He attributed this vast increase to "aspirations of Indian people for higher education and professional development"; to university admission arrangements for mature students; to the Department's financial support for university students, such as the provision of living allowances and payment of tuition; and to the counselling component of the Department's university program.¹⁹ The federal program for provision of financial support to Indian university students was viewed as an integral aspect for continued Indian participation in post-secondary education.

In concluding his presentation to the Standing Committee on Indian Affairs and Northern Development, the Minister reiterated his stance on "continued dialogue" with Indian people at all levels of political organization. However, he indicated that policy implementation would ultimately be at the Band level.

Implementation will not be rushed nor forced nor otherwise brought into existence except as requested by Indian parents or bands or other local community organizations representative of Indian parents....the control and responsibility will rest with the Bands to chart their educational course seeking whatever assistance they require from whatever source they desire.²⁰

The role of the Department of Indian Affairs and Northern Development was to increasingly become "that of a service function to which Bands can turn as they feel the need for consultation, for discussion, and for provision of specialized educational services...."²¹ The expectation for the National Indian Brotherhood regarding educational policy was that the NIB would

from time to time, update and modify its educational policy and that the application will vary from community to community as communities see and express the need for change in the educational offering.²²

The Department advocated a Department-to-Band focus rather than a Department-to-NIB-to-Band focus for implementing Indian control of Indian education.

The six areas elaborated by the Minister in his speech of May 24, 1973, comprised the government's initial perception of implementation of Indian control of Indian education. Phrases such as "in dialogue", "in partnership", with "consultation" and "cooperation" were used by the Minister to describe the government's vision of how the implementation of educational policy should proceed.

Perceptions of Educational Policy Implementation, 1973:
George Manuel, President, National Indian Brotherhood

George Manuel, President of the National Indian Brotherhood, spoke to the Standing Committee on Indian Affairs and Northern Development on May 24, 1973, at the conclusion of the Minister's speech. His brief presentation highlighted several aspects of educational policy for Indians. He reviewed for the Committee the process which had resulted in the NIB policy document, Indian Control of Indian Education. Manuel acknowledged the importance of the Committee's own investigation and subsequent report on Indian education. He noted that the Committee's seventeen recommendations served to direct attention to particular problems in Indian education and that the Indians' task had been to "formulate the general principles which would cover these and the many other problems which are found in every Indian community across the country."²³ These principles were embodied within the four areas identified by Indian parents as the major areas of concern in Indian education: responsibility, programs, teachers, and facilities. The policy document Indian Control of Indian Education elaborated on these four areas and offered direction for an educational policy which would meet the stated goals and principles contained within the document as well as embody the stated Indian philosophy of education.

Manuel, as the vocal representative of Indian Control of Indian Education at this meeting, chose not to elaborate extensively on the contents of the NIB policy document. For this

reason, this study will digress from his speech per se and examine the policy document itself for changes in educational policy deemed necessary for realization of Indian control of Indian education. Each of the four areas mentioned by Manuel and contained within the policy document are hereunder scrutinized.

The first area of educational concern considered in Indian Control of Indian Education is labelled "Responsibility". Within this area, several immediate steps were to take place regarding tuition agreements with provincial school systems. Existing agreements were to be reviewed between the Department and the Indian people involved "for the purpose of making specific recommendations for their revision, termination or continuance";²⁴ future agreements were to be contracts with the Band(s) as first party; attention was to be focused on services provided to Indian children under tuition agreements; and general agreements with provinces regarding Indian education, such as in British Columbia and Manitoba, were in violation of the new educational policy and were to be reviewed by local Bands involved or by provincial Indian associations. Pressure was to be exerted by the federal government for passage of provincial laws to "insure Indian representation on all provincial school boards in proportion to the number of children attending provincial schools..."²⁵ Finally, the federal government was to take immediate steps "to transfer to local Bands the authority and the funds which are allotted for Indian education."²⁶ The Band itself was to determine the relationship which would exist between the local

education authority and the Band Council. Administrative training was to be made available to those Bands desiring local control of education.²⁷ The changes advocated in the section of the document labelled "Responsibility" incorporated changes in Indian representation on provincial school boards, in the tuition agreements with school boards or provinces, in the structure of Band education authorities, and in Indian management of education program funding. That training and preparation were prerequisites for transfer of education programs to Bands was also recognized. All of these changes sought to increase parental responsibility for and direct participation in the provision of educational services to Indian children.

The second area discussed in the National Indian Brotherhood policy document is entitled "Programs". The local education authority would take the initiative in identifying educational needs of the community, including adult education, vocational training, special education classes, kindergarten, alcohol and drug education, and junior/senior high schools. The local education authority would have the authority to implement programs identified either on a temporary or long-term basis. Quality of instruction in federal, Band and provincial schools was to be addressed by cooperative/participatory curriculum development for courses in Indian history and culture which would "promote pride in the Indian child and respect in the non-Indian student."²⁸ In addition, books which were negative, biased or inaccurate were to be removed from schools; supplementary material depicting Indian

contributions to Canadian life was to be developed to augment existing curricula; Indian studies courses were to be developed; and all I.Q. and standardized testing was to cease for Indian students.²⁹ All of these changes reflected a locally or parentally directed structuring of particular education program aspects which were intended to positively influence the educational experiences of Indian children. The provision of educational services was implicitly viewed on a "perceived needs" basis rather than on the basis of available funding.

Several additional program aspects were mentioned in the "Programs" section. Steps to be taken regarding language of instruction included making funds available for the development of native language programs and for the training of teacher aides and local language-resource aides.³⁰ Enhanced recruiting programs and ample financial support was to be provided by the federal government to encourage Indians to enter post-secondary and professional training; universities and other professional training institutions were to be encouraged to examine entrance requirements for adjustments to allow for entrance on the basis of "ability, aptitude, intelligence, diligence and maturity."³¹ Finally, Cultural/Educational Centres were to continue to be funded with the understanding that "all decisions concerning their evolution (goals, structure, location, operation, etc.) be the sole prerogative of the Indian people."³² Accordingly, Indians were to have representatives on any committees which would "decide policy and control funds for the Cultural Education Centres".³³

Indians were to have a structuring and directing role rather than just an advisory function in the evolution of the Cultural/Educational Centres Program.

"Teachers" was the third area of concern cited in Indian Control of Indian Education. A critical step toward effecting improved Indian education was the re-designing of teacher and counsellor training programs to meet the need for more native teachers and counsellors. In addition, special training for non-Indian teachers and counsellors intending to work with Indian children in either federal or provincial school systems was to be provided through required courses in intercultural education, native languages, and teaching English as a second language. Local educational authorities were to be involved in hiring teachers and counsellors. Training opportunities were to be provided for the urgently-needed Indian para-professionals, or teacher-aides and counsellor-aides.

Within the final program area, "Facilities", substandard educational facilities were to be replaced and new educational facilities were to be made available based on community-perceived needs. These new facilities could entail day schools, group homes, student residences or integrated schools.³⁴ The type of educational facilities to be provided was to be a matter for local determination.

In summary, the four areas of educational concern described in Indian Control of Indian Education contained suggestions for specific steps which could be taken towards realization of the

philosophy and goals embraced within the policy document. The policy paper was not intended to be an implementation plan. The paper focused on "what" could be done rather than "how" it should be done. Questions of timing, structures and forums for policy implementation were to be the next phase of realization of Indian control of Indian education.

In concluding his presentation to the Committee, Manuel emphasized three points which expanded on his perceptions of the policy implementation phase. He concurred with the Minister's advocacy of "a consultative and a joint approach between the Department of Indian Affairs and the Indian bands across the country."³⁵ In this regard, he also made mention of a joint mechanism under discussion at that time which would serve as a forum for policy implementation. This joint mechanism evolved as the Joint Cabinet/National Indian Brotherhood Committee mechanism.

A second point of emphasis made by Manuel concerned the pace of policy implementation. He stated that "there must be some precautionary steps taken to ensure that this policy will not be foisted on the Indian bands with undue haste."³⁶ The Minister had emphasized this point as well in his speech to the Committee.

Finally, Manuel pointed to funding as a prime concern of the moment. He stressed the point that funding must be assured on a continuing basis in order for Bands to carry out their education programs. Manuel suggested that revision to the Indian Act might incorporate the necessary legislative changes to assure the funding. In the interim, he suggested an Order-in-Council to

address the "matter of assured continuing funds for education programs to Indian bands..."³⁷ Operating education programs on a year-to-year basis (or month-to-month basis) was viewed as a detriment to effective programming; guarantees for continuous funding of programs was essential.

The document Indian Control of Indian Education elucidated educational changes which could initiate Indian control of Indian education. In his speech of May 24, Manuel advanced his perceptions of how the change process should proceed: through a "consultative and joint approach", at a pace determined by individual Bands themselves, and under conditions of guaranteed continued funding for education programs.

An examination of an address given by Manuel to the Conference of Saskatchewan Chiefs in June of 1973 provides insight into some concerns by the Indians themselves regarding implementation of the new educational policy. This speech, entitled "Education: Problems of Policy and Implementation," highlights some of the implications of the new policy already under consideration by Indian people. The tone of Manuel's speech suggests the apprehension within the Indian community regarding the dramatic policy shift by the federal government.

After so many years of being on the outside trying to get a look in, suddenly and dramatically, we find ourselves in centre stage, with the leading role to play.

It is no wonder that many Indian people are dismayed and concerned that this is just another white-man-tactic to weaken and ridicule the Indian. It is no wonder that within the

Department there is uneasiness and confusion. My own reaction is one of cautious optimism....³⁸

Undoubtedly, many Indians shared Manuel's attitude of "cautious optimism" regarding the government's adoption of Indian control of Indian education as educational policy in 1973.

In his address, Manuel cited the Treasury Board directive by which authority could be transferred to Bands to manage parts of their education program. He emphasized that this could occur only at the request of the Band. The concern that such an avenue of implementation could have implications for Treaty rights was addressed by Manuel, and Indian Act revision was suggested by him as an appropriate measure for protection.

There is however, the over-riding concern that our treaty rights are not sufficiently protected, and that in five, or ten, or twenty, or one hundred years, there could be an attempt to place all educational responsibility on Indian people, including that of funding. We can insure that this doesn't happen by providing for protection in the Indian Act of our educational rights as found in 'Indian Control of Indian Education.'³⁹

The concern expressed by many Indians at that time was that in transferring authority to operate education programs to Bands, the responsibility for funding of those transferred programs would eventually fall upon Bands as well. Responsibility for funding of education was viewed as a federal responsibility, and legislative guarantees recognizing that responsibility were viewed as essential.

Manuel addressed the "hesitation on the part of Indian people to be responsible for the administration and bookkeeping required

in handling the large sums of money involved in school programs" by stressing that it would be the Band which would determine its own state of readiness.⁴⁰ Training for such undertakings would be available through the establishment of an Indian Education Service, an entity which had been proposed by the National Indian Brotherhood to the federal government and was at the time of Manuel's speech still under government consideration.

The relationship between the Band School Committee or Band Education Authority and the Band Council was also addressed by Manuel. Under the policy prior to 1973, the School Committee was basically an "advisory body with limited influence", and the potential for being "at odds with the Band Council" was not insignificant, especially when the Committee consisted of Department-appointed members. Manuel assured the Conference participants that the Indian policy document clearly stated "that the Band itself will determine the relationship which should exist between the Band Council and the School Committee."⁴¹ Conflict would be minimized because the relationship would be clearly defined and understood.

The Education Committee will have to recognize its subordinate position to the Band Council; it does not have legal status or financial independence such as provincial school boards have. However, when the Band Council delegates its authority on education matters to the Education Committee, it should let them do the job, with clear terms of reference to enable them to develop a productive educational program for the benefit of the community.⁴²

The relationship between Band Education Authorities and Band Councils needed to be contextualized in terms of the philosophy

expoused in Indian Control of Indian Education. Once understood and mutually acknowledged in such terms, that relationship could induce a productive atmosphere for implementation of Indian control of Indian education; community disharmony and administrative conflict could be minimized.

Manuel concluded his speech to the Conference of Saskatchewan Chiefs by stating that the process of policy implementation rested on the involvement of Indian people themselves.

Unless every single Indian parent knows about this policy, understands it and approves it, there will be very little that the associations or the National Indian Brotherhood can do in this next phase of implementation. The parents must know what is going on and must be directly involved in forming the implementation formula best suited to their community: this is a matter of top priority.⁴³

Manuel reiterated that implementation of Indian control of Indian education was ultimately based on local initiative and local participation.

Manuel's speech before the Saskatchewan Chiefs successfully addressed several major concerns among Indians in 1973 regarding implementation of the new educational policy. Implementation of Indian control of Indian education was not a national or provincial Indian association task; it was a community undertaking. Any education program transfer would occur only when the Band itself felt adequately prepared. The process of education program transfer could proceed successfully with an understanding of the political relationship between Band Council and Band Education Authority or Band School Committee. The

assurance that funding of educational services to Indians would continue to be a federal responsibility was being sought by Indian leaders through the process of Indian Act revision.

Summary of Perceptions in 1973 for Implementing
Indian Control of Indian Education

The preceding sections of Chapter Two have described in considerable detail what the federal government, as represented by Minister Chretien, and what the Indian people, as represented by both the National Indian Brotherhood's President and its policy document Indian Control of Indian Education, perceived to be directions for change in Indian educational policy. What was needed to be done to effect "parental responsibility and local control" was generally agreed upon. There needed to be (a) a transfer of "control" to Band education authorities; (b) curriculum development, adaptation, and improvement; (c) increased training opportunities for Indian teachers, teacher-aides, counsellors, and counsellor-aides; (d) increased native language program development and native language instructor support; (e) continued support for the Cultural/Educational Centres Program; (f) reexamination of existing federal-provincial tuition agreements and consideration of procedures for future provincial tuition agreements; (g) measures taken to ensure Indian representation on provincial school boards where Indian students were enrolled; (h) assessment of Indian school facilities; and (i) increased support for Indian students attending university. How these changes would come about and the extent of these changes became the focus of activity from 1973 onward.

The Realities of Change in Educational Policy and Programs:
Some Statistics

By 1973, both the National Indian Brotherhood and the federal government had formulated ideas regarding what areas in education required change in order to implement Indian control of Indian education. This section presents some statistical data for some of these education areas for the years 1973 through 1978. Through this statistical description, an assessment of change in Indian educational policy between 1973 and 1978 is provided.

One of the two fundamental principles incorporated in the 1973 educational policy was "local control". Both the government and the National Indian Brotherhood advocated transfer of management and administration of education programs to Bands. The amount of the Department of Indian Affairs and Northern Development budget which was managed by Bands specifically in the education activity area increased tenfold, from \$5.6 million in 1972/73 to \$53.1 million in 1978/79.⁴⁴ The percentage of the Department's total education budget which was administered by Bands increased from 4.6% in 1972/73 to approximately 20% in 1978/79.⁴⁵

Table 1.--Band-Managed Funds in the Education Activity (\$ millions)

1972/73	1973/74	1974/75	1975/76	1976/77	1977/78	1978/79
5.6	11.3	17.9	54.8	33.5	47.5	53.1

Table 2.--Percentage of Total Education Budget Managed by Bands

1972/73	1973/74	1974/75	1975/76	1976/77	1977/78	1978/79
4.6	8.1	10.9	29.9	14.8	19.2	19.97

The sharp drop in dollar amounts and in percentage of total education program funds administered by Bands between 1975/76 and 1976/77 reflects the budget cutbacks to the Department for fiscal year 1976/77 which the Department translated into cutbacks in the discretionary areas of educational services, including noon lunch programs, adult education, and education assistance programs.

Department total expenditures in the education activity increased from \$120.4 million in 1972/73 to \$265.8 million in 1978/79. However, the percentage of total DIAND budget allocated to the education activity actually decreased from 43.1% in 1972/73 to 40.4% in 1978/79.⁴⁶

Table 3.--Percentage of Total DIAND Budget Expended on Education

1972/73	1973/74	1974/75	1975/76	1976/77	1977/78	1978/79
43.1	41.5	42.2	39.9	40.9	38.6	40.4

These figures suggest that while percentage of Band-administered funds in the education program increased fivefold, the amount of total budget apportioned to education activity did not increase during the timeframe of this study but rather decreased slightly.

The actual number of Band-operated schools increased from 53 in 1975/76 to 108 in 1978/79.⁴⁷ However, percentage of Indian students attending Band-operated schools in 1978/79 was only eight percent of total Indian school enrolment for elementary and secondary education.⁴⁸ Fifty-three percent of Indian students enrolled in elementary and secondary education were enrolled in provincial schools, and thirty-nine percent were enrolled in federal schools.⁴⁹ These latter percentages compare to approximately sixty-one percent of Indian students enrolled in provincial school systems in 1971/72.⁵⁰ Both the increase in number of Band-operated schools and in percentage of total education funds managed by Bands between 1973 and 1978/79 indicate a positive change toward "local control", or local administration and management of education program aspects.

Implementation of Indian control of Indian education incorporated a second fundamental principle, "parental responsibility". Participation of parents in education of their children in situations of Band-operated schools can be direct, through administration of funding and through the functioning of Band School Committees or Band Education Authorities. Between 1972/73 and 1978/79, the number of Band School Committees increased from 246 to 450; in addition, 140 Band Educational Authorities were operational in 1978/79.⁵¹ Since there are a total of 573 Bands in Canada, it is probably accurate to assume that almost all, if not all, Bands in Canada had initiated Band School Committees or Band Education Authorities by 1978/79.

Band School Committees or Band Education Authorities could also provide the means for participation of Indian parents or Bands in provincial school systems, especially in the context of parental or Band Council participation in the negotiation of tuition or joint school agreements. There were general tuition agreements with three provinces during the timeframe of this study for Indian students attending provincial schools in those provinces. Provincial Indian associations participated fully in the general agreements negotiated in the provinces of New Brunswick and Manitoba.⁵² The agreement in Manitoba is re-negotiated annually, with the Manitoba Indian Brotherhood as third party signatory.⁵³ The general agreement in British Columbia was initiated in 1969 without direct Indian participation; it had only come under review by the Provincial Department of Education, the Department of Indian Affairs and Northern Development, and the Indians of British Columbia in mid-1977. However, the review was for purposes of finding a way to provide special services for Indians attending provincial schools, rather than for purposes of terminating the agreement or renegotiating it overall.⁵⁴ Tuition agreements in the other provinces are negotiated with individual school boards. In entering tuition agreements with individual provincial school boards, Bands can negotiate for special services, such as language training, cultural curriculum content, Indian history, etc.⁵⁵ Prior to 1973, formulation of tuition agreements did not necessarily include Band Council participation.

In 1975/76, Indian students attended 1,289 provincial schools under tuition agreements. In 1977/78, that number had increased to 1,946 provincial schools.⁵⁶ Joint school agreements increased from 550 in 1971/72 to 643 in 1976/77. These latter agreements were concluded with Band Councils as signatories to the agreements.⁵⁷ Some of these agreements did not initially contain special provisions for Indian students; however, agreements were subject to and available for review when special needs were subsequently identified by any of the three signatory parties [School Board, Department, Band].⁵⁸ Regarding joint school agreements made prior to 1973, reviews were also to be made, since many agreements were concluded without Band participation. By mid-1977, many reviews of such agreements had been carried out; however, there was admittedly a "bottleneck" in accommodating the individual requests for specific agreement reviews.⁵⁹ As well, there was in some instances a dissatisfaction among Bands which, in preferring to establish schooling on their respective reserve rather than continue under the joint school agreement, were refused such action for reasons of duplication of capital outlay.

A second method by which direct parental participation in education in provincial school systems could occur is through Indian representation on provincial school boards. The number of Indians formally members of provincial school boards in various provinces increased from approximately 70 in 1975/76 to approximately 100 in 1977/78.⁶⁰ However, since Provincial School Acts vary in their consideration of Indian representation on

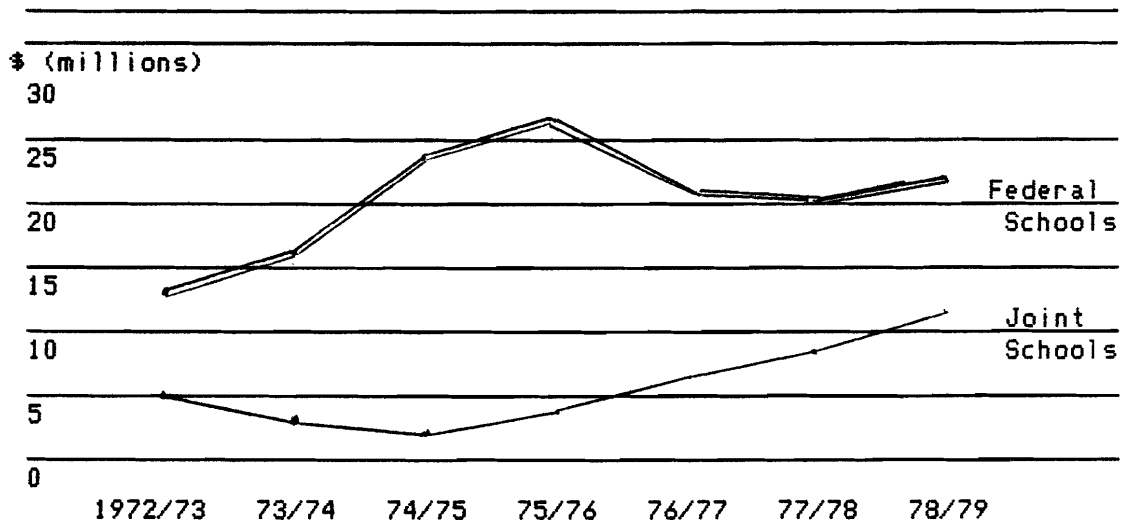
school boards, it is unknown to this researcher what percentage of these Indian school board members had full voting privileges. By 1978, the provinces of British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan had "legislation which provides the opportunity for full and equal (or better) participation by Indians on provincial school boards."⁶¹ The provinces of Alberta, Quebec (excluding northern Quebec), Nova Scotia, Prince Edward Island, Newfoundland and Labrador did not by 1978 "have any legislation that pertains particularly to Indians."⁶² Two provincial school boards, the Cree Board and the Kativik School Board, were created in northern Quebec under the James Bay Agreement, which came into effect in mid-1978. The extent to which individual Provincial School Acts consider Indian representation on provincial school boards is discussed in Appendix 1.

Between 1973 and 1978, then, opportunities to exercise "parental responsibility" through operation of Band School Committees or Local Education Authorities expanded in terms of increase in number of School Committees and Local Education Authorities. An additional 657 schools were attended by Indian children under tuition agreements and over 100 new joint school agreements were formulated.⁶³ Tuition and joint school agreements concluded after 1973 incorporated full participation of Band Councils or delegated School Committees and Education Authorities.

One of the four primary education areas cited in Indian Control of Indian Education as requiring positive change was

labelled "Facilities". Capital expenditures in education increased from \$17.8 million in 1972/73 to \$34.1 million in 1978/79.⁶⁴ However, both capital expenditure for federal and Band-operated schools and for joint schools are represented in the total figure for capital expenditures. Between 1972/73 and 1974/75, capital expenditures in joint schools decreased while capital expenditures in federal/Band schools increased significantly. In 1975/76, capital expenditures in joint schools began an upward climb, while capital expenditures in federal/Band schools peaked in 1975/76 and began a downwards trend through 1977/78.

Figure 1.--Capital Expenditures on Education: Federal/Band and Joint Schools



Taken from: Canada. Indian and Northern Affairs Canada. Indian Conditions: A Survey. (Ottawa: INAC, 1980), 124.

Another primary education area where change was required in order to implement Indian control of Indian education came under the label "Teachers".⁶⁵ In 1973, the Minister of Indian Affairs and Northern Development had also cited the primary need for increased attendance by Indians in university and university teacher-training programs. In 1972/73, the cumulative total of applications approved for university attendance was 911; by 1978/79, that cumulative total had risen to 2,606.⁶⁶ Applications specifically approved for teacher-training programs had accumulated to 104 in 1972/73; by 1978/79, approved applications for teacher-training programs had reached 602.⁶⁷ To compliment the increase in Indian students engaged in teacher-training, the number of universities offering teacher-training programs designed specifically for Indians increased from eight in 1974/75 to seventeen by 1980.⁶⁸ Financial support for university and professional training increased from approximately \$7.1 million in 1974/75 to approximately \$10.3 million in 1978/79.⁶⁹

Within the Education staff of the Department of Indian Affairs and Northern Development, the number of teachers of Indian or Inuit status increased from 271 in 1973/74 to 501 in 1977/78.⁷⁰ Teachers of Indian or Inuit status comprised 20.1% of total Departmental education staff in 1973/74 and 26.7% in 1977/78. The number of Departmental Education staff with Intercultural education or native studies courses completed increased from 393, or 10.3% of total education staff, in 1973/74, to 573, or 30.6% of total education staff, in 1977/78. Teacher-aides employed by the

Department increased in number from 145 in 1972/73 to 419 in 1978/79.

Employment of Education counsellors and Social counsellors by the Department, by Bands, and by School Boards, was in reverse proportion between 1975/76 and 1978/79. Total number of employed Education counsellors decreased from 158 in 1975/76 to 128.5 in 1978/79. Total number of employed Social counsellors increased from 258.5 in 1976/76 to 411 in 1978/79.⁷¹ The number of Social counsellors employed by the Department and by School Boards remained fairly constant during these years; however the number of Social counsellors employed by Bands rose dramatically from 179 to 326 between 1975/76 and 1978/79. Bands employed only one Education counsellor from 1975/76 to 1977/78 and two in 1978/79. The number of Education counsellors employed by School Boards remained fairly constant during these years, ranging from 34.5 to 40. However, Department-employed Education counsellors decreased from 138 to 104 between 1975/76 and 1978/79. These figures gave rise to the contention of the National Indian Brotherhood in 1975 that the Department emphasized employment of paraprofessionals over professional counsellors, to the educational detriment of Indian children.⁷² The Department considered the employment of Social counsellors an opportunity for increased participation of Indians in the education of Indian children. The paraprofessional status was viewed as a training lag, expected to be bridged as more Indians qualified for professional status through training programs.⁷³

Another major education area where improvement was called for in 1973 was the area of native language instruction. In 1973/74, approximately 150 federal schools offered native language as either language or subject of instruction. By 1976/77, that number had increased to approximately 200 federal schools and approximately 50 provincial schools which offered native language as either language or subject of instruction.⁷⁴ These increases were complemented by the native language research and curriculum development concurrently being undertaken through the Cultural/Educational Centres Program. Twenty-four such language research projects had been undertaken by 1976.⁷⁵

The preceding statistical description of changes in the system of Indian education during the years 1973 through 1978 reflects avenues of implementation of Indian control of Indian education. Increases were found to have occurred in number of Band-operated schools and amount and percentage of total Department education program budget managed by Bands. Numbers of Band School Committees and Band Education Authorities experienced significant increases. All tuition and joint school agreements concluded after 1973 were stated to have had full participation of Band Councils as third party signatories.

Other education areas where noticeably change occurred served to enhance the educational environment of Indian children. Increases were apparent in number of native language programs offered in federal and provincial schools. The number of Indian teachers employed by the Department almost doubled, although

percentage of Department staff who were of Indian status seemingly leveled at under thirty percent. Percentage of Department staff with intercultural or native studies training increased threefold. Numbers of teacher-aides and social counsellors increased, although number of education counsellors decreased. Indian university attendance tripled, and teacher-training program attendance increased sixfold between 1972/73 and 1978/79.

These numerical increases represent one facet of implementation of educational policy during 1973 through 1978. On the whole, they depict positive change, though modest by some standards, in terms of what education areas requiring improvement were cited in 1973. The interactive processes on a national level which enveloped these numerate changes, however, present another essential facet of educational policy implementation during the timeframe of this study.

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65. National Indian Brotherhood, Indian Control of Indian Education, 18.

66. Indian and Northern Affairs Canada, Statistics Division, "Data Sheets", n.d., photocopied.

67. Ibid.

68. Department of Indian Affairs and Northern Development, Annual Report, 1974/75, 32; Arthur J. More, "Native Indian Teacher Education in Canada," Education Canada 20 (Spring 1980): 34.

69. Indian and Northern Affairs Canada, Indian Conditions: A Survey, 54 and 125.

70. Indian and Northern Affairs Canada, Statistics Division, "Data Sheets", n.d., photocopied. NOTE: All figures quoted in this paragraph are from various data sheets provided by this source.

71. "Survey of Education/Social Counselling Staff - Canada" (DIAND, December 1977), 1-2. (Canadian Association in Support of Native Peoples, Text-fiche 78049)

72. Ibid.

73. Elwood Bell and Wil Sinclair, Indian and Northern Affairs Canada, interview by author, 31 May 1988, Regina, tape recording.

74. Department of Indian Affairs and Northern Development, Annual Reports 1972/73-1978/79.

75. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 1 April 1976, Issue Number 40, 46.

CHAPTER 3

THE CULTURAL/EDUCATIONAL CENTRES PROGRAM
AS AN INSTRUMENT OF EDUCATIONAL POLICY IMPLEMENTATIONIntroduction

Cultural/Educational Centres were envisioned in 1973 by both the government and the Indian people as vehicles for Indian input into Indian educational systems. They were perceived as instruments by which Indians could take the initiative "(a) in retrieving, preserving and nurturing their cultural heritage; and (b) in supplementing and complementing conventional education with appropriate cultural input."¹ Indian Control of Indian Education described "Cultural Education Centres" as having the potential to play a "vital role...in cultural, social and economic development" of Indian peoples.² In his speech before the Standing Committee on Indian Affairs and Northern Development on May 23, 1973, the Minister of Indian Affairs and Northern Development had included the Department's Cultural/Educational Centres Program as one of the six primary education areas upon which the Department would focus immediate effort in order to actualize the new policy of Indian control of Indian education. This chapter first describes briefly the roots of the Cultural/Educational Centres Program: the Indian Association of Alberta's Alberta Indian Education Centre. Secondly, the development of the Program is traced from its inception in 1971 to 1978. Thirdly, some statistical information regarding the Centres in operation during the timeframe of this study is presented. Finally, a consideration of Indian

consultation in the development and evolution of the Centres Program is provided, in order to analyze the Cultural/Educational Centres Program as a vehicle for implementation of Indian control of Indian education.

Roots of the Cultural/Educational Centres Program

The initial impetus for the Cultural/Educational Centres Program came from the Indian Association of Alberta's concept of a Centre "started by Indian people...run by Indian people for Indian people."³ In March of 1970, the Indian Association of Alberta had submitted a proposal to ten separate federal departments asking for financial support to establish and operate an Alberta Indian Education Centre. Extensive excerpts from this proposal were included in the Indian Chiefs of Alberta Citizens Plus presented to Prime Minister Trudeau in June, 1970.⁴ The Centre concept was proffered in Citizens Plus as an Indian-conceived means by which Indian control of Indian education could become actualized.

The Centre was conceived as "an educational complex", containing space for residency by single people and family units⁵ and for an Inter-Tribal Community Day School for children of parents in residency.

The main emphasis will be on cultural learning that will go on in the Council Chamber, in the Band Rooms, in the Language Rooms, where the Indian students will develop a deep awareness of what it means to be an Indian, and how this awareness will help him in living in the society dominated by non-Indians.

From this knowledge and even at the same time, learning and experiences will be going on in what are called Social Relations, Academic Relations and Technical Relations areas.⁶

In his residence, in council, in ceremony, and in many media of expression the Indian student will be presented opportunities to see himself, his Indian world, and the components of the dominant society in a variety of relationships, one to another....he will learn about what he must know to survive in that society. Yet he will not lose himself in the complexity of education for life in that society.⁷

The Alberta Indian Education Centre would embody an Indian cultural framework in an educational setting.

The Centre was to be supplement and complement programs run at other institutions. An interchange between the Centre and other institutions would allow students to "attend courses at other institutions", and other institutions to "be asked to run some courses at the Centre."⁸ Cardinal describes the intent of having the Centre tie-in to the provincial post-secondary system:

Our idea was to build a facility in which we would look at all facets of adult education and vocational training, curriculum development, experimental kindergarten, primary and secondary schools, with the view that this complex would then tie-in with the post-secondary system of the province.⁹

The proposal included a projected cost of around fifty million dollars. The resources of thirty different government departments were to be tapped, for it had been ascertained "that areas of expenditure and responsibility that were directly related to our educational training needs existed in each."¹⁰ These financial resources could be channelled into the Centre rather than dispersed on an individual departmental basis. By tapping the existing resources of many federal departments, the Indian

Association of Alberta hoped to maintain the coordinating function in the Centre itself rather than to have the Department of Indian Affairs and Northern Development establish a separate program which it could departmentally coordinate.

The Indian Association of Alberta proposal for an Indian Education Centre was initially viewed to be "outside the scope of existing policies, programmes and budgets" of the federal government.¹¹ However, Saskatchewan, British Columbia and New Brunswick soon submitted proposals for similar Centres.¹² The proposals were subsequently referred to the Interdepartmental Committee on Indian and Eskimo Policy which then sought Cabinet approval for a sub-committee to study the whole concept of cultural/ educational centres. On June 18, 1970, Cabinet approved the sub-committee formation, and the sub-committee was struck in July of 1970. The findings of this sub-committee of the Interdepartmental Committee on Indian and Eskimo Policy provided the basis for a Cabinet decision regarding the establishment of a government program to accommodate the idea of cultural/educational centres.

Cabinet Approval for the Concept of "Native"
Cultural/educational Centres

The findings of the special subcommittee of the Interdepartmental Committee on Indian and Eskimo Policy were presented to Cabinet on June 11, 1971. After consideration by the Cabinet Committee on Social Policy, the sub-committee's plan for

the formation of "native" cultural/ educational centres was accepted in principle by Cabinet on July 29, 1971.¹³ The Department of Indian Affairs and Northern Development and the Department of the Secretary of State were to jointly establish a five-year renewable financing program for the support of the centres. Two million dollars was to be provided for fiscal year 1971-72, and ten million dollars for each of the subsequent four years was to be included in financial estimates, on an 80-20 basis (the 80% coming under DIAND administration).¹⁴ Direct program and financial involvement was to be limited to status Indians. However, consideration was given to Metis and non-status Indians in that the government was to

formally indicate its willingness to enter into agreements with status-Indian organizations and provincial governments for the participation of Metis and non-status Indians in these centres....¹⁵

The Interdepartmental Committee on Indian and Eskimo Policy was to co-ordinate the implementation of the native cultural/educational centres program. The Indian Association of Alberta's proposal for the Alberta Indian Education Centre was to be the first centre considered for approval.

In a 1978 evaluation report of the Cultural/Educational Centres Program prepared by Evalucan Ltd. of Calgary, Alberta, several weaknesses in the original mandate for the Program were cited.

(1) what is to be funded--i.e. what is a cultural/educational centre; (2) who will be the recipients of the services provided--i.e. a ...program for status Indians with possible special arrangements for non-status and Metis people; (3)

where exactly the funding is to come from and who controls it--i.e. two departments appointment to oversee--one whose mandate is for status Indians--the other for multi-cultural groups.¹⁶

These weaknesses indicated discrepancies in direction and lack of clarity and were to have implications for the development of the program.

By December of 1971, a set of objectives and criteria for program operation were developed by an appointed committee, consisting of employees from the Departments of Indian Affairs and Northern Development, Secretary of State, Regional Economic Expansion, Manpower and Immigration, and from Treasury Board and the Privy Council Office.¹⁷ The 1978 program evaluation report notes that these objectives and criteria, apparently developed without major input from native people, were to become the "philosophical basis upon which government decisions around the programme would be operationalized."¹⁸ A Secretariat, chaired by J. Ciaccia of the Department of Indian Affairs and Northern Development, was formed and assumed a management role in implementation of the program.

Treasury Board approved for five Centres in June of 1972; funding for four additional centres was granted on November 7, 1972.¹⁹ These nine centres were: the Alberta Indian Cultural Education Centre, the Old Sun Cultural Centre (Alberta), the Saskatchewan Indian Cultural Centre, New Brunswick Indian Heritage Centre, the Nishnawbe Institute in Toronto, the Native North American Studies Institute, the Mohawk Institute in Brantford, the

Keewatinung Institute in Sault Ste. Marie, and the Yukon Cultural Education Centre.

By April of 1973, administrative and philosophical problems had surfaced within the program between the two departments jointly responsible for its operation.²⁰ Subsequently, the Department of Indian Affairs and Northern Development was assigned the responsibility for administering the program, with a reduced funding allocation of eight million from the original ten million dollars per fiscal year. The Secretary of State was to submit a proposal for the spending of the two million dollars allocated for the 1973-74 fiscal year; the proposal was to be "directed towards native cultural development."²¹ This Program reorganization placed the Cultural/Educational Centres Program solely under the direction of the Department of Indian Affairs and Northern Development. In January of 1974, the operation of the Cultural/Educational Centres Program was subsumed under the Education Branch of the Department.

The Cultural/Educational Centres Program operated for its full five-year mandate. The Department of Indian Affairs and Northern Development applied for continuation of the program in March of 1976, but Treasury Board only approved a one-year extension, with a budget reduction to five million dollars and a freeze on creation of any new centres. An evaluation of the program was required before approval of another five-year mandate could be considered. Two evaluations were undertaken; one was an

in-house program review, and the other was concluded under the auspices of the National Steering Committee of Centre Directors.

Treasury Board approval for an extension of the Cultural/Educational Centres Program was secured on December 1, 1977 (T.B.Minute 753033). The program funding level was maintained at five million dollars, but the freeze on new centres was lifted. The 1977 program approval included a new set of objectives and criteria. These had been prepared "by the Secretariat with major consultation and input from representatives of the National Cultural/Educational Centres Directors."²² These 1977 objectives and criteria for the Cultural/Educational Centres Program were the first Treasury Board approved criteria/objectives for the program even though it had been operational since the 1972/73 fiscal year.

Statistical Information on Cultural/Educational Centres

By 1978, there had been seventy Centres funded under the Cultural/Educational Centres Program. Table 4 summarizes the number of Centres which received initial funding during the timeframe of this study.

Table 4.--Number of Centres By Year of Commencement of Funding

1972/73	1973/74	1974/75	1975/76	1976/77	1977/78
9	11	25	17	0	8?

Source: Evalucan Ltd. Evaluation of The Cultural/Educational Centres Programme (Calgary: Evalucan Ltd, 1978), 41.

By 1978, nineteen of the Centres which had received funding at some point since 1972 were inactive. Thus, a total of fifty-one Centres were active in fiscal year 1977/78. The breakdown by province of both inactive and active Centres is found in Table 5.

The size of Cultural/Educational Centres operating during the timeframe of the study varied considerably. If one considers the measure of Centre size by categories of dollar allocation, there were in 1977-78 twenty-two Centres with an allocation of less than \$20,000; seventeen Centres with an allocation between \$20,000 to \$100,000; and twelve Centres with an allocation of over \$100,000.²³ Centres were operated by individual Bands, groups of Bands and, in one instance, under the auspices of a provincial Indian association.

Table 5.--Number of Centres by Province or Territory,
1977/78

	Active	Inactive
Alberta	10	2
British Columbia	8	5
Manitoba	5	3
New Brunswick	11	3
Northwest Territories	1	0
Nova Scotia	1	0
Ontario	5	2
Quebec	8	1
Saskatchewan	1	0
Yukon	1	3
TOTAL	51	19

Source: Evalucan Ltd. Evaluation of The Cultural/Educational Centres Programme (Calgary: Evalucan Ltd, 1978), 104.

As mentioned before, the original mandate for the Cultural/Educational Centres Program allocated two million dollars for 1972/73, eight million dollars for 1973/74 to 1975/76, and five million dollars for each subsequent year. Table 6 shows the number of centres in operation, total financial disbursements and participating populations for each fiscal year within the timeframe of this study. There is a noticeable difference between money allocated and actual disbursement of funds for each fiscal year.

Table 6.--Financial Disbursements in the
Cultural/Educational Centres Program

Year	No. of Centres in Operation	Funds Dispersed	Participating Populations
1972/73	9	1,700,000	133,893
1973/74	20	3,200,000	156,846
1974/75	44	4,500,000	207,829
1975/76	53	4,900,000	197,937
1976/77	51	5,000,000	n/a
1977/78	52	4,550,000	n/a

Source: National Steering Committee of Centre Directors. "Draft: Cultural/Educational Centres Program" (Xerox, 1976), 3; and phone interview with Eric Weigeldt, Cultural/Educational Centres Program, Ottawa, 27 May 1988.

Funding allocations for individual Centres were on a per capita basis, beginning in 1973/74, at a rate of \$28.21, according to the population of the Band or Bands supporting the Centre. Band Council Resolutions indicating support of a particular proposed Centre were required.

The activities engaged in by the Centres varied considerably; Centre size, resources available and perceived needs of the people the Centre served were among the factors determining the activities pursued. Several categories of activities were determined in the 1978 Evalucan Ltd. report and included the following:

- Preservation of culture (includes traditions, lifeskills, arts and crafts, history, legends)
- Language Programs (teaching, documentation, research translations)
- Resource Centre (museum, archives, consulting services, audio/visual, graphics)
- School Programs (curriculum development, improvement of education for native people)
- Outreach programs and home economics
- Special events (cultural, i.e. pow-wows, elder-youth workshops, spiritual and ceremonial events; and educational, i.e. workshops and conferences for staff, teacher orientations, courses in administration and public relations)²⁴

The 1978 evaluation report prepared by Evalucan Ltd. of Calgary concluded "that the individual Centres are doing a good job of delivering appropriate programs to the appropriate people."²⁵ The evaluators remarked that they were impressed with the impact that the Centres had had in light of the relatively short period of program existence. Among the recommendations proffered in the evaluation report were that the Program should continue, should receive higher priority within DIAND, and should remain centralized (i.e., "under no circumstances should it be placed under DIAND regional control").²⁶ These positive recommendations provided support for the subsequent approval of the Cultural/Educational Centres Program to operate on an A-level budget basis in fiscal year 1978/79.

Indian Consultation in the Development and Evolution of the
Cultural/Educational Centres Program

The Cultural/Educational Centres Program was accepted in principle by Cabinet in July of 1971, a little more than a year after the idea was first brought to the attention of the government through the Indian Association of Alberta's proposal for an Indian Education Centre. The Indian Association of Alberta's proposal envisioned an educational complex planned, organized and managed by Indian people. The interdepartmental sub-committee's submission to Cabinet on the concept of cultural/educational centres incorporated some of the ideas embodied in the Indian Association of Alberta's proposal. Among the suggestions for establishing a government program for cultural/educational centres contained within the sub-committee's Memorandum to Cabinet (June 11, 1971) were the following:

The Centres were to encourage involvement of the total family in the education process.

The Centres were to involve native people in the decision making process, and to gain support from native people at the community level.

The Centres would be developed, directed and managed by native people with specialized technological assistance brought in by them as required.

Centres could vary widely in complexity and according to the Cultural/Educational needs of the groups originating the Centre proposals.²⁷

Even though these suggestions resembled some of the ideas presented in the Alberta Indian Education Centre proposal, the actual development of the Cultural/Educational Centres Program

during 1973 through 1975 was noticeably devoid of Indian participation.

The Cabinet Committee on Social Policy, having considered the sub-committee's memorandum of June 11, 1971, requested that Cabinet approve the Interdepartmental Committee on Indian and Eskimo Policy as the co-ordinating agent for program implementation. A special standing sub-committee was to be appointed to carry out the responsibilities delineated in the Cabinet request. The responsibilities listed in the Cabinet Document (817-71, July 1971) stated that the standing sub-committee would review and evaluate all cultural/educational centre proposals; consult with "appropriate provincial authorities in order to ensure their support and participation in proposed centres within their boundaries"; advise the Department of Indian Affairs and Northern Development as to required funding for proposals; and "maintain an evaluation procedure in relation to established centres, in order to ensure their continued viability and satisfactory standards of performance".²⁸ The standing sub-committee would consist of representatives from the Departments of the Secretary of State, Indian Affairs and Northern Development, Manpower and Immigration, and Regional Economic Expansion.²⁹ No provision was made for formal Indian representation on this standing sub-committee. Responsibilities of the standing sub-committee did not include consultation with Indian people or Indian organizations.

The lack of Indian participation was prevalent throughout the initial stages of structuring program management features and developing program objectives and criteria. The authority to receive and evaluate the merit of Centre proposals as well as to determine evaluation criteria for continuation of established Centres rested solely with the standing sub-committee comprised of government representatives. Furthermore, it was this appointed sub-committee which eventually developed the initial set of objectives and criteria for the Program, without major input from Indian people.³⁰ Two examples can be provided whereby the decisions of this standing sub-committee of government representatives curtailed individual Cultural/Educational Centre development. In one instance, one of the original five Centres was discontinued "by decision of DIAND when it was deemed, after two years of funding, as not meeting the Programme criteria."³¹ In another case, one of the original five Centres "withdrew after three years because it refused to incorporate."³² Mandatory provincial or federal incorporation had been one of the criteria for Centres established by the committee of government representatives. Evidently, the Department of Indian Affairs and Northern Development perceived the requirement for incorporation as the means by which "the political group role of associations" could be "kept separate from the Cultural/Educational Centres Program".³³ The required incorporation criteria were later changed unilaterally by the Department of Indian Affairs and Northern Development "to include recognition of Centres by Band

Council Resolutions.³⁴ However, the upholding of the incorporation criteria prior to the recognition of Centres through Band Council Resolutions resulted in the cessation of one of the original five Centres. In these two instances, the development of Cultural/Educational Centres as perceived by their respective Indian proponents was thwarted.

During the initial structuring of the Cultural/Educational Centres Program, it was determined that a Secretariat, consisting of seconded government personnel and chaired by a Department of Indian Affairs and Northern Development representative, would be formed to implement the program. Four major administrative and management practices were decided upon at the first meeting of the Secretariat on July 4, 1972: (1) The Secretariat would determine what type of evaluation reports would be required from each Centre beyond the financial statement and audit. (2) Funding would be quarterly. (3) The Secretariat, housed in Ottawa, would be the administrative agent, i.e., centralized administration. (4) Administrative costs and travel funds for the Secretariat would not be charged to the Cultural/Educational Centres Program but to DIAND personnel costs. The third and fourth item were generally supported by the Centres during the timeframe of this study.³⁵ But by May of 1973, the difficulties some Centres were having with the scheme of quarterly funding was noted. In an appearance before the Standing Committee on Indian Affairs and Northern Development, Mr. Ciaccia, the chairman of the standing sub-committee on cultural/educational centres, had a question

posed to him regarding funding; the question included the following comment:

Certainly the objection I hear is that their programs are being curtailed and their staff is being curtailed because they never quite know when the funds are going to be available. It is difficult to plan ahead, as you can appreciate, if they have no certainty of that.³⁶

Mr. Ciaccia responded that any funding delays experienced were probably due to the "newness" of the program or to the joint administration of the program. He cited the creation of the Secretariat as the administrative agent for the program as the avenue for overcoming any similar delays in the future. Mr. Ciaccia's prediction was not totally accurate, however. In the period of program evaluation (1976-77), many Centres once again encountered similar frustrations regarding the quarterly funding scheme of the Program.³⁷ The uncertainty of continuous funding curtailed long-range development plans in many of the Centres.

Mr. Ciaccia was then queried as to the nature of consultation occurring in setting up the Secretariat. He responded that the National Indian Brotherhood had been asked to sit on the selection board to nominate the executive secretary. He subsequently reiterated the same point.

In terms of involvement of associations, nothing would have prevented us from hiring a secretary for the administration of the program without involving the associations. We chose to involve the NIB. We have asked them to sit on the selection board. We funded the NIB to have two meetings to which you have referred.³⁸

The two National Indian Brotherhood meetings referred to in the above quote had been cited by a committee member of the Standing

Committee on Indian Affairs and Northern Development, and she had stated:

It is my understanding, Mr. Ciaccia, that the reaction of many of the people involved in the cultural centres is that the department has got cold feet about this whole program and that they are being somewhat reluctant to even consult or to carry on consultative practices with the organizations; that there have been two national meetings of the Indian Brotherhoods on this and that they do not feel that the consultation and co-operation is forthcoming from the department in keeping this program working in an orderly way so that they can plan ahead.³⁹

The lack of consultation with Indians regarding the early development of the Cultural/Educational Centres Program was not due to lack of interest or concern on the part of Indian leaders. The National Indian Brotherhood attempted to have input into the development of the Cultural/Educational Centres Program. A submission to the Department of Indian Affairs and Northern Development was made by the National Indian Brotherhood in early 1973. This submission included "Project Operation Guidelines" and the following three specific recommendations regarding management/administration of the Cultural/Educational Centres Program: (a) the Executive Secretary position should be under the direct control of the National Indian Brotherhood; (b) money for Centres should be channelled from the Department of Indian Affairs and Northern Development through the respective provincial or territorial Indian organization; and (c) the National Indian Brotherhood should be given a mandate to pursue funding for capital expenditures in order to establish permanent cultural/educational centres.⁴⁰ This submission was apparently rejected

almost immediately by the Department of Indian Affairs and Northern Development as being "unacceptable" or "contrary to department policies and practices."⁴¹ No further consideration was given to the National Indian Brotherhood's proposed guidelines for Cultural/Educational Centres Program operation.

The National Indian Brotherhood's concern and effort to have input into the evolution of the Cultural/Educational Centres Program is also reflected in a resolution passed at the 1975 General Assembly meeting in Truro, Nova Scotia. This motion, which was carried, read:

15 - MOTION: (Sol Sanderson, Richard Pine)

WHEREAS the five-year Cultural Education Centres Program is due to terminate this fiscal year.

AND WHEREAS the Cultural Education Centres provide for meaningful Indian self-development.

BE IT RESOLVED THAT funding for the Cultural Education program be renewed and continued.

FURTHERMORE BE IT RESOLVED THAT the criteria for funding for the program be revised by a committee established by the National Indian Brotherhood to provide for reasonable allotment and utilization of funds.⁴²

The National Indian Brotherhood was subsequently not involved in the revision of program criteria for funding. However, the Education Staff of the National Indian Brotherhood did contribute to the Cultural/Educational Centres Program evaluation undertaken by the Centres Directors Committee by conducting a "survey of Band opinion" on the Cultural/Educational Centres Program.⁴³ A final example of the National Indian Brotherhood's attempt to become directly involved in the Cultural/Educational Centres Program is

cited below in the context of a 1978 Resolution regarding support of the Centres Directors Committee.

The National Steering Committee of Centres Directors

Though the National Indian Brotherhood did not become directly involved in the development of the Cultural/Educational Centres Program, it did support a committee comprised of Directors of individual Centres across Canada.⁴⁴ This Committee, the National Steering Committee of Centres Directors, emerged as a guiding force for the Program evolution from 1975 through 1978.

The National Steering Committee of Centres Directors was formed under the initiative of the Centres themselves

to provide liaison between the Department and centres across the country, among the centres themselves, and cultural/educational centres and bands in a particular region, on matters related to the Cultural/Educational Centres Program.⁴⁵

The imminent Program evaluation in 1975/76 also provided impetus for the formation of such a committee.⁴⁶ Centre representatives met collectively with the Executive Secretary of the Cultural/Educational Centres Program Secretariat for the first time in May of 1974. During 1975, the committee of Centre representatives formally organized as the National Steering Committee of Centre Directors.

The National Steering Committee of Centres Directors participated in the Program evaluation process which had been requested by Treasury Board in order for the Department to secure funding for the Cultural/Educational Centres Program subsequent to

the expiry of its original five-year mandate in 1976-1977. The Department of Indian Affairs and Northern Development had asked the Committee of Centre Directors "to prepare a revision of the Criteria which will establish an acceptable structure and method for operating the Program on a permanent basis."⁴⁷ The National Steering Committee's report, submitted to the Department in November of 1976, was used as the basis for the development of the Department's submission to the Treasury Board in March of 1977. The Committee of Centres Directors subsequently worked with the Department on revising the March 1977 submission for presentation to the Treasury Board in November of 1977.⁴⁸ Several of the changes in Program criteria in 1977 had a direct impact on the role of the National Steering Committee of Centres Directors in the Cultural/Educational Centres Program.

The revised Cultural/Educational Centres Program Criteria, approved by Treasury Board on December 1, 1977 (T.B.Minute 753033), incorporated a broader and more meaningful role for the Centres Directors Committee. The Centres Directors Committee was to be directly involved in the evaluation process of Cultural/Educational Centres, both on an individual program level and on the national Program level.⁴⁹ In addition, an advisory role for representatives of the Centres was incorporated into the program management structure.

4.1.C. A Committee of Centres' representatives, named at the annual plenary session of Directors of Centres, will advise the Executive Secretary on policy decisions and major problems arising in the Program, as well as on

the periodic evaluation of Centres and the National Program.⁵⁰

An advisory role, rather than a direct management role, was preferable to Committee members during 1978.⁵¹ Many Committee members felt that more time was required to insure Program stability before consideration should be given to transferring the management control of the Program over to an Indian body, such as the National Steering Committee of Centres Directors.

The Cultural/Educational Centres Program was transferred from "B" level to "A" level funding in fiscal year 1978/79; that is, the program officially moved from developmental status to on-going status. The Committee of Centres Directors was viewed by the National Indian Brotherhood as having had a significant role in effecting this status change.⁵² However, by late 1978, the Cultural/Educational Centres Program was perceived by the National Indian Brotherhood to be in jeopardy, and the need for active involvement of the National Indian Brotherhood Executive Council with the Centres Directors Committee was called by resolution at the General Assembly of the National Indian Brotherhood on August 20-31, 1978, in Fredericton, New Brunswick.

WHEREAS the Cultural/Educational Centres program has come under attack from various sources:

(1) The Department has, in conjunction with the Treasury Board, frozen the level of funding required; thus, inhibiting the growth of the existing centres,

(2) Despite the commitments made, the Centres find it difficult, if not impossible to plan current and future fiscal activities because of the Department's unilateral decisions. The funding requirements for 1978-79 fiscal year are \$7.5 million, yet only \$5 million has been committed. Treasury

Board and the Department of Indian Affairs are attempting to freeze our funding allotments, thus supressing our growth and development activities,

(3) The Department continually questions our ability to deliver effectively while at the same time asking us to provide them with long-range budgetting projections outlining our program activities and the funding levels required. Without a guaranteed level of funding that incorporate inflationary and other natural growth factors, individual centres cannot accurately predict their level of activity from one year to the next,

(4) Our most recent problems came with an attempt by the Treasury Board Secretariat to completely curtail the program. This plan has been defeated from the present.

WHEREAS the National Indian Brotherhood General Assembly, Whitehorse, September 1976, passed a resolution expressing its support of the Cultural/Educational Centres program; and

FURTHER THAT this support was of benefit to the National Steering Committee in its revisions of the National Criteria and on-going negotiations with the Department of Indian Affairs and Northern Development,

BE IT RESOLVED THEREFORE:

(1) THAT the General Assembly of the National Indian Brotherhood restate and re-affirm its support of the Cultural/Educational Centres program to ensure the continuation of a program; and,

(2) THAT the Executive Council of the National Indian Brotherhood exercise their authority in helping the National Steering Committee confront and resolve the above stated and additional problems it is encountering.⁵³

This resolution reflects the perception of the Cultural/Educational Centres Program by the National Indian Brotherhood at the end of 1978.

Cultural/Educational Centres As Vehicles for Indian Control of Indian Education

The Cultural/Educational Centres Program has been introduced into this study as a potential instrument for implementation of

Indian control of Indian education during 1973-1978. The Cultural/Educational Centres Program had its roots in the 1970 Indian Association of Alberta's proposal for an Indian Education Centre; the Indian Association of Alberta's proposal exemplified initiative taken by an Indian organization to create and manage, or "control", an "Indian" educational process. When the Alberta Indian Education Centre became a reality in 1972, it was not in the originally conceived form or structure. It was one of five cultural/ educational centres approved under a 1971 Department of Indian Affairs and Northern Development/Secretary of State Cultural/Educational Centres Program. The form and structure of these first five cultural/ educational centres were determined by government committees and sub-committees devoid of Indian representation. When, in early 1973, Indian participation in further formulation of policy and management procedures for cultural/educational centres was sought through a National Indian Brotherhood proposal submitted to the Department of Indian Affairs and Northern Development, the proposal was basically "ignored".⁵⁴ Opportunities for Indian input into structuring the Cultural/Educational Centres Program in the early stages of development were negligible.

Partnership in policy evolution of the Cultural/Educational Centres Program became somewhat of a reality in 1975 through the efforts of the Executive Secretary of the Cultural/Educational Centre Secretariat and the initiative of a newly formed Committee of Centres Directors. By 1978, under a new set of criteria and

program management procedures in which the Centres Directors had had major input, the Centres Directors had acquired the means to participate in Cultural/Educational Centre Program evaluation as well as to advise the Executive Secretary on policy decisions.

The focus in this chapter regarding implementation of educational policy through the vehicle of the Cultural/Educational Centres Program has been on the macroscopic level, in viewing the Program "as a national entity with broad objectives in support of a multiplicity of activities and component programs conducted at Centres across Canada".⁵⁵ The Cultural/Educational Centres Program should also be viewed microscopically, at the individual Centre level, in order to fully assess the Program as an instrument of educational policy implementation. Individual Centres exist "as unique and local entities, with clearly stated objectives covering only the scope of activities conducted at each Centre".⁵⁶ As this study is delimited to national and provincial Indian organizational interaction with the federal government, a survey of individual Centres is outside the scope of this study. However, the 1978 Evalucan Ltd. evaluation of the Cultural/Educational Centres Program incorporated an extensive field investigation of Cultural/Educational Centres across Canada. In their summary of results, they made the following comments:

The Program as reflected by Centres' programs is planned, operated and managed by Indian/Inuit people. Its effects are positive. Indian/Inuit people are responding in their own way to their own perceived needs.⁵⁷

The educational priorities of the Department [DIAND] are not clear to us. What is clear is the Indian/Inuit stand on

control of their own education. We believe the Programme has provided the vehicle by which Indian/Inuit people were allowed the freedom to react to their own needs in their own way. This is to be commended.⁵⁸

Cultural/Educational Centres were assessed in the 1978 evaluation report as working toward Indian control of Indian education.⁵⁹

There was a significant amount of educational activity observed by the evaluators.

In many instances, the Cultural/Educational Centres are the only groups investigating the learning, educational or cultural needs of bands. They are forefront--in many ways--in developing curriculum designs and programs, language classes and other aids such as dictionaries and histories. They promote learning with the overt backing of their sponsors, which are Indian/Inuit bands, groupings of bands and in some cases provincial or territorial associations.⁶⁰

On the level of individual Centre activity, the Cultural/Educational Centres Program has been deemed a viable instrument for Indian input into their own educational systems.

The opportunity for the Cultural/Educational Centres Program to be "created and managed" by Indian people at the national level of program evolution, however, was negligible in the first two years of program operation. From 1975-1978, Indian input into overall Program development gradually improved by virtue of the formation of the Committee of Centres Directors and that Committee's subsequent participation in the formulation of the 1977 "Criteria/Department Management Policy and Procedures" for the Cultural/Educational Centres Program. The National Steering Committee of Centres Directors was, at the end of 1978, a logical entity for takeover of the Cultural/Educational Centres Program, were the Program to be transferred to Indian control. However,

the National Steering Committee of Centres Directors recommended any such transfer be postponed for several years in order for the Program to become stabilized. At the terminal point of this study, the advisory role of the Committee of Centres Directors for the Cultural/Educational Centres Program remained intact.

CHAPTER THREE ENDNOTES

1. National Steering Committee of Centres Directors, "Cultural/Educational Centres Program Draft Evaluation," November 1976, 1.

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3. Indian Chiefs of Alberta, Citizens Plus (Edmonton: IAA, 1970), 85.

4. Ibid., 57-88.

5. Ibid., 85.

6. Ibid., 86.

7. Ibid., 64.

8. Ibid., 87.

9. Harold Cardinal, The Rebirth of Canada's Indians (Edmonton: Hurtig, 1977), 187.

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11. V.M. Bryant and J.S. Mackan, "Evaluation of the Cultural/Educational Centres Program" (Calgary: Evalucan Ltd., December 31, 1978), 19.

12. Ibid.

13. The term "native" was used for the program in the Cabinet Memorandum and the Social Policy Committee approval.

14. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 22 May 1973, Issue Number 17, 11.

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20. Bryant and Mackan, 31-2.
21. Ibid., 33.
22. Ibid., 51.
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27. Ibid., 20.
28. Ibid., 21-22.
29. Ibid., 22.
30. Ibid., 23 and 33.
31. Ibid., 28.
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33. Letter between two senior DIAND officials dated 8 December 1972. In Bryant and Mackan, 38.
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37. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 19 May 1977, Issue Number 42, 24.
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41. Ibid.
42. National Indian Brotherhood, Annual Report 1976.
43. National Indian Brotherhood, Annual Report, Education, 2.
44. National Steering Committee of Centres Directors, "Minutes of Meeting of May 30, 31, 1978," 8. Photocopied.
45. Ibid., 4.

46. Ibid.

47. National Steering Committee of Cultural Centres Directors, "Cultural/Educational Centres Program Draft Evaluation," November 1976, 15.

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49. Department of Indian Affairs and Northern Development, "Cultural/Educational Centres Program Criteria: Department Management Policy and Procedures," December, 1977. Sections 5.2.B; 5.2.C.iii; and 5.1.A, respectively.

50. Ibid., 14.

51. National Steering Committee of Centres Directors, "Minutes of Meeting of May 30, 31, 1978," 8. Photocopied.

52. See National Indian Brotherhood General Assembly Resolution 19, August, 1978.

53. National Indian Brotherhood, "Minutes of the 9th Annual General Assembly of the NIB Held in Fredericton, N.B. on August 29, 30 and 31, 1978," Resolution 19.

54. Bryant and Mackan, 36.

55. Department of Indian Affairs and Northern Development, "Cultural/Educational Centres Program Criteria: Department Management Policy and Procedures," December, 1977. Section 5.A.i.

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CHAPTER 4

INDIAN ACT REVISION AS A METHOD FOR IMPLEMENTATION
OF EDUCATIONAL POLICYIntroduction

One of the primary methods explored during 1973-1978 for effecting change in educational policy for Indians was a consideration of revision to the education sections of the Indian Act. Changes with respect to the sections [Sections 114-123 inclusive] in the Indian Act which contain provision for educational services to Indians constituted one aspect of the larger process of overall revision to the Indian Act undertaken in this period of time. This chapter will focus on the process regarding proposed changes to the education sections of the Indian Act within the context of the larger process of Indian Act revision. First, a brief history of events prior to 1973 regarding Indian Act revision is presented. Second, the Indian Act revision process is depicted in its preparatory stage, 1973-74. Third, the 1974 Alberta Indian Act Study Team's proposed revisions to the education sections of the Indian Act are examined. Fourth, the formalizing and negotiating periods of the consultative process, 1975-77, are described, with specific reference to the issue of education revisions to the Indian Act. Finally, the events of 1978 regarding the joint consultative process and the revisions to the education sections of the Indian Act proposed by the Department of Indian Affairs and Northern Development are discussed.

Background to the Indian Act Revision Process
of the 1970's

The Department of Indian Affairs and Northern Development acknowledged the need for revision to the Indian Act in the late sixties. Throughout the 1960's, Indians had become increasingly "visible" to the Canadian public as among the most disadvantaged minorities in Canadian society. Weaver cites several reasons for the enhanced public perception of an "Indian problem" in Canada.¹ The citizen participation movement had "focused public attention on the political marginality of Indians".² The widespread debate on "special rights" for Quebec and for Francophones in general had sensitized the Canadian public to the serious question of national unity and to the legitimate place of ethnic groups within Canada. The civil rights and the anti-poverty movements in the United States during the 1960's had enhanced Canadian public sympathy for "disadvantaged" minority groups in Canada and for the "Indian cause" in particular.

The highlighting of an "Indian problem" in the sixties brought increased pressure on the government to "do something" about that "problem." Attention was focused on the Department of Indian Affairs and Northern Development as traditional "caretaker" of the Indians.

Much of the public criticism of government action or inaction during the 1960s focused on the paternalistic administration and the Indian Act which created this special bureaucracy.

Although the purpose of the Indian Act was not generally understood by the public, and by many Indians as well, the Act soon became a symbol of discrimination, a piece of racist legislation (e.g. Currie 1968: Canadian Welfare 1967). Both

Indians and whites increasingly criticized it, and by extension the Indian administration which had been created by the Act, as a dehumanizing instrument....it was seen as restricting freedom of choice and individuality, which other Canadians enjoyed.³

The Department of Indian Affairs and Northern Development made the decision to revise the Indian Act within the context of mounting public criticism of the Department itself and of the publically-perceived restrictive nature of the Indian Act.

By December, 1967, the Department had almost completed a draft revision of the Indian Act.⁴ This draft was to have been mailed to various Indian organizations for feedback.⁵ However, a Departmental decision was made to hold a series of consultation meetings across Canada before the release of the draft revision in order to allow for more Indian participation in the revision process.⁶ The first consultation meeting took place on July 25, 1968, in Yellowknife. Eighteen meetings were held across Canada, and the consultation process culminated in a national conference on April 28, 1969.

The Department intended the focus of the consultation meetings to be the revision to the Indian Act.⁷ However, Indian leaders perceived a different kind of political agenda for these meetings.

Indian preoccupation centred on special rights, unsettled treaty obligations, and aboriginal claims-- not on the Indian Act.⁸

The stand that was most repeatedly taken by Indian spokesmen was that no negotiations of sections of the Indian Act, or on such policy matters as education and economic development, could take place until treaty rights and native title were recognized by the government.⁹

The meeting unanimously wishes to go on record that it will not agree to any revisions to the Indian Act until the Canadian Government acknowledges the existence of and inviolability of Indian treaties and treaty rights.
(Resolution passed at Indian Act Consultation Meeting held in Toronto January 22, 1969)¹⁰

This contrast in political agendas for these unprecedented consultative meetings between Indian people and the federal government foreshadowed a fundamental philosophical difference between Indian Nations and the Canadian government which became more pronounced in the consultative policy-making process of the mid-1970's. The government viewed modification of an existing piece of legislation, the Indian Act, as the primary avenue for rectifying the situation of Indians in Canada. The spokesmen of the Indian Nations, however, envisioned a realignment of the relationship between Indian Nations and Canada on the more fundamental level of treaties and aboriginal rights.

Within two months of the final consultation meeting, Prime Minister Trudeau tabled a new Indian policy document entitled "Statement of the Government of Canada on Indian Policy, 1969". This policy document became known as the 1969 White Paper on Indian policy. As part of a process described in the White Paper whereby Indians could achieve "full and equal participation in the cultural, social, economic and political life in Canada", the government recommended that "the legislative and constitutional base of discrimination be removed".¹¹ Repeal of the Indian Act was listed as item one under the "steps" the government was

prepared to undertake in creating the framework envisioned in the White Paper policy document.

The White Paper purported to be "a recognition of the necessity made plain in a year's intensive discussions with Indian people throughout Canada."¹² The phrase "year's intensive discussions" referred to the eighteen consultation meetings which had occurred in 1968-69. However, within one day of the White Paper's release, the National Indian Brotherhood issued a press release firmly repudiating the White Paper.

The White Paper, the press release noted, had been unilaterally devised by the government without Indian discussion or negotiaion, with the result that 'we do not feel we took part in any decision-making process'; either the government had not heard what they had been saying at the consultation meetings, or their statements had been disregarded.¹³

The issue of the nature of Indian consultation regarding the formulation of the principles contained within the White Paper clouded subsequent interactions between the government and the Indian Nations.¹⁴

Within one year after Trudeau tabled the White Paper, the Indian Chiefs of Alberta produced and presented to Trudeau their counter policy statement, Citizens Plus, or "Red Paper", which rejected the repeal of the Indian Act.

It is neither possible nor desirable to eliminate the Indian Act.

It is essential to review it, but not before the question of the treaties is settled. Some sections can be altered, amended, or deleted readily. Other sections need more careful study, because the Indian Act provided for Indian people, the legal framework that is provided in many federal and

provincial statutes for other Canadians. Thus the Indian Act is very complicated and cannot simply be burned.¹⁵

The attitude reflected in the Red Paper regarding Indian Act revision was not shared by all Indians. Cardinal states that the Indian people were divided on the question of revision to the Act in the late sixties.¹⁶ However, the national position as well as the position taken in the Red Paper reflected the majority opinion that the larger question of treaties and aboriginal rights should be explored before piecemeal revisions to the Indian Act were considered.

Attention shifted away from Indian Act revision during 1970-1971 as Indian organizations, with the support of the federal government, researched the questions of treaty relationships, aboriginal rights, and Indian claims.¹⁷ However, by mid-1972, two cases involving the issue of membership rights of women who had lost status under Section 12(1)(b) of the Indian Act were in the court system.¹⁸ The Indian Association of Alberta took the position in August of 1972 that a ruling in favor of the two women to reclaim their status on the basis of Section 12(1)(b) being in violation of the Canadian Bill of Rights would seriously undermine the legitimacy of the entire Indian Act. This position was endorsed by the National Indian Brotherhood by February of 1973.

Our position was that it was not the rights of women at stake. If it was decided that the Canadian Bill of Rights was supreme over the Indian Act, that decision would wipe out the Indian Act and remove whatever legal basis we had for our treaties. Thus, the relationship between the Indians and the government would be dramatically affected. What was at stake was the whole relationship between Indians and whites.¹⁹

By February of 1973, the Lavell case stood before the Supreme Court of Canada. The Indian Association of Alberta had prepared a brief to be submitted to the federal government which would initiate a process whereby the Indian Association of Alberta would have a complete revision to the Indian Act ready in six months time. If the Supreme Court ruled that Section 12(1)(b) was in violation of the Canadian Bill of Rights, the Indian Association of Alberta wanted an alternative legislative instrument ready for consideration by Parliament.²⁰ In addition, the National Indian Brotherhood had submitted a request to the federal government for an amendment to the Indian Act which would provide that the Act would remain in effect notwithstanding the Canadian Bill of Rights.²¹ The Lavell case was unsuccessful before the Supreme Court; the Indian Act remained intact. Nevertheless, the Indian Association of Alberta found itself formally committed to proposing revisions to the Indian Act.

Indian Act Revision Process, 1973-1974

By the end of February, 1973, the National Indian Brotherhood had submitted a proposal to the Department of Indian Affairs and Northern Development to hold consultations with Indian people across Canada on the future of the Indian Act.²² The Minister welcomed this proposal in a speech before the House of Commons Standing Committee on Indian Affairs and Northern Development. He queried :

Since this is legislation for the protection and benefit of Indian people, what better way can there be to ensure that it reflects their aims, aspirations and needs?²³

Subsequently, the National Indian Brotherhood set a fall deadline for submissions from provincial Indian organizations which would provide the national organization with direction in their dealings with the government on a revision process for the Indian Act.²⁴ Several provincial Indian organizations engaged in Indian Act studies; among these Associations were those in Nova Scotia, New Brunswick, Ontario, Saskatchewan and Alberta.²⁵ The Indian Association of Alberta received funding specifically to engage in preliminary work on Indian Act revision on behalf of the National Indian Brotherhood.²⁶ At the Fourth Annual General Assembly of the National Indian Brotherhood in September, 1973, the Assembly passed a resolution stating that any reform of the Indian Act must be done in a complete and integrated fashion rather than on a piecemeal basis and that the revision process should be undertaken by Indian people through a discussion and consultation process.²⁷

By March of 1974, the National Indian Brotherhood had proposed to the Minister of DIAND that a revision to the Indian Act be based on eight specific position papers. In a letter dated March 28, 1974, to the President of the National Indian Brotherhood, Minister Chretien rejected the proposal.

...what is required now is a comprehensive proposal based on consultation with Indian Band members. We need concrete recommendations from you for legislative amendments to the total Act, and these recommendations must be based on the views of the Indian people generally, and not on the opinions of a selected few who would produce the papers you propose.²⁸

The Minister suggested that the National Indian Brotherhood should "bring together" the studies undertaken by various provincial Indian organizations and "weld" them "into one comprehensive, national proposal for legislative change."²⁹ He further stated that although Indian Act revision "should be discussed with as many Band members as possible", he saw "no need to launch a special, costly program specifically to discuss the Indian Act."³⁰

In June of 1974, a Memorandum of Agreement was formalized between the National Indian Brotherhood and the Department of Indian Affairs and Northern Development to review the Indian Act. The sum of \$225,000 was agreed upon as funding for a four month period ending October 31, 1974. By that date the National Indian Brotherhood was to deliver to the Minister possible amendments to the Indian Act for discussion purposes.³¹ The Executive Council of the National Indian Brotherhood issued a mandate to the Indian Association of Alberta to execute the Indian Act Study. A study team was set up by the Indian Association of Alberta.

The study team initially examined and discussed the existing Indian Act, the terms of the treaties and many previously prepared position papers from other Indian organizations....After its initial review the study team began the clause by clause writing, rewriting and discussion of the paper presented to you today. Certain sections of the existing Indian Act were deleted, others were altered, and a great number of new sections were added to state the obligations of the Federal Government to the Indian people of Canada.³²

A draft version of the study team's proposed revisions was presented to the National Indian Brotherhood on August 5, 1974. The draft proposal was intended to serve as a discussion paper for

Indian organizations and Indian people throughout Canada.³³ An amended draft proposal was presented to the newly appointed Minister of Indian Affairs, Judd Buchanan, by the specified deadline, October 31, 1974, with the understanding that it was a tentative proposal and did not "represent any solid consensus at all."³⁴ Nevertheless, this proposal offered a starting point for discussions on Indian Act revision.

The 1974 Indian Act Study: Provisions for Education

The Indian Act proposed by the Alberta Indian Act Study Team in August of 1974 was inherently different from the Indian Act in several ways. Cardinal summarizes these differences as follows: the revised Act was intended to (a) reflect the needs of the Indian people and not the federal government; (b) confirm and enforce by law the treaty rights of Indian people; and (c) specifically encourage community development.³⁵ The Alberta Indian Act Study Team's proposed revisions included modifications to existing sections of the Indian Act and additions of completely new sections. For the purposes of this study, only the revisions to the education sections of the Indian Act are herein considered. The study team acknowledged that their proposal reflected "the personal opinions of the study team members" and was intended to serve as a basis for "grassroots discussion across the country" rather than to be a definitive statement on proposed changes to the Indian Act representative of Indians on a national level.³⁶ However, an examination of the proposal reveals a divergent

perspective -- an Indian perspective-- on what provision of educational services to Indians could or should entail beyond that which was contemporarily contained within the Indian Act.³⁷

The proposal contained six headings for educational provisions. These headings, and the section numbers listed under each heading, are cited below.

The Education Right of the 'Mature' Indian (360-379)
 The Education Right of the Young Indian (380-390)
 The 'Young Indian' Not Residing on a Reserve (391-392)
 Kindergarten for Reserve Children (393-395)
 Schools for Reserve Children (396-397)
 Other Regulations on Education (393-403)

The proposed provisions for education contained within the above headings are hereunder compared with the provisions for education contained within the Indian Act.

The Indian Act makes no provision for educational services for Indians beyond the age of sixteen except under special circumstances to age eighteen. The entire first part of the proposed Indian Act, almost half of the designated sections, is devoted to a description of the education rights and responsibilities of "mature" Indians and the procedures to be followed in the exercising of those rights and responsibilities. "Mature" Indians are defined in the proposed Indian Act as those Indians who are fifteen years of age or older. The "education right" of the mature Indian is described as follows:

360. For a mature Indian the education right shall be the actual classroom program, laboratory program or practical program and in addition the fees, texts, supplies, living allowance, clothing allowances, transportation costs, return fares for holidays, comfort and sundry items reasonably needed

by that Indian to ensure that the Indian can benefit from the program prescribed.³⁸

The Consolidated Revenue Fund was to be the monetary source for provision of these education rights of mature Indians (S.361); the monies expended were not to be taxable (S.362). There were to be "no budget restrictions and no quota system based on shortage of funds" (S.361). No mature Indian could be "denied the right to an education by reasons of age, sex, income, location, lack of funds, etc." as long as the student met the requirements set by the institution of his or her choice (S.367, 365). By contrast, funding for Indian education in 1974 was obtained through the Department's annual budgetary submission to Parliament and was subject to financial limitations imposed by the Treasury Board. Funding of post-secondary education was considered to be discretionary, i.e., monies available from what is left after non-discretionary or statutory responsibilities are fulfilled. Budget restrictions for post-secondary education were inherent in the actual funding process.

The 1974 Indian Act proposal described the procedures to be followed by a prospective Indian student initiating an educational endeavor (S.368-369). What constituted an "approved institution" and an "approved program" were included in sections 373 and 374, respectively. Procedures for instances of withdrawal, suspension or expulsion were contained in sections 378, 377 and 375, respectively. A final section stated that the Department of Indian Affairs and Northern Development was to "assist Indian

students to find jobs (a) during summer holidays and (b) after graduation" (S.379).

The inclusion of provisions for "mature" Indians, or Indians fifteen years of age and above, in a revised Indian Act was an attempt by the Study Team to legislatively recognize the right of Indians of all ages to education, based on a perceived Indian Treaty right to education. By the early 1970s, the notion of education as a Treaty right was beginning to be articulated by Indian spokespersons and organizations, especially from the prairie Treaty provinces.³⁹ However, the federal government did not formally recognize education as a Treaty right. Provision of post-secondary education during this period was considered to be discretionary and was effected through Departmental guidelines. The issue of the Treaty right to education was a major point of contention in the Indian Act Revision process in 1975-1978.

Through the Indian Act, the federal government is under statutory responsibility to provide for education of Indian children between the ages of seven to sixteen. Under special circumstances, the Minister can lower the age to six or raise it to eighteen.⁴⁰ Provisions for kindergarten and pre-school programs are not statutory but rather authorized by Treasury Board Minute. The proposed Indian Act incorporated legislative authority for kindergarten and pre-school programs. Parents could send their three- to seven-year-olds to any "approved" kindergarten as defined in Section 387. If there were no approved kindergartens or pre-schools available, tutoring services could be arranged by

the parent, with the Department paying for such services (S.390). If there was a kindergarten operated on the reserve, the Indian child could attend that kindergarten but not any other kindergarten (S. 395). Any "approved" kindergarten attended by Indian children had to:

- (a) allow parents to observe the classes;
- (b) have at least one Indian as a full-time staff member;
- (c) offer instruction by an instructor competent in the Indian language of the child;
- (d) have facilities that are approved by the Department;
- (e) not require the student to attend any religious exercises or classes in religion.⁴¹

These mandatory conditions reflect the study team's perception of the importance of kindergarten and pre-school experiences for Indian children.

The proposed Indian Act described the education right of young Indians, or those Indians under fifteen years of age, as "the actual kindergarten or school program" with the same additions as delineated in Section 360 above, i.e., fees, texts, supplies, etc. (S.380). Costs for education of young children were chargeable to the Consolidated Revenue Fund; monies expended were non-taxable; and no budgetary restrictions were permissible (S.381-382).

Under the Indian Act the Minister has the authority to "establish, operate and maintain schools for Indian children" or enter into agreements with provinces, territories, school boards or religious/charitable organizations for education of Indian children.⁴² In the proposed Indian Act, the tribal council was to have the decision-making power over which entity would operate a

kindergarten or any schools on their respective reserve, i.e., whether a school would be operated by the Department or by an Indian Corporation or society. No provincial authority could be authorized, however, to operate educational services on reserves (S.393,396). The tribal councils were to have the power to negotiate on behalf of reserve students for places in off-reserve schools. There was no mention in the education sections of the proposed Indian Act whereby Ministerial approval of tribal council decisions was required. The ultimate decision-making authority rested with the tribal council.

Schooling was compulsory for Indians seven to fifteen years of age in the proposed Indian Act (S.385). In the Indian Act, compulsory attendance is for ages seven through sixteen. Under the proposed Indian Act, the following mandatory conditions existed for any "approved" school; the approved school would:

- (a) have at least one full-time Indian counsellor on staff
- (b) have one third of instruction time conducted in the native language
- (c) employ its own truant officer and keep a close check on absences and keep the parents informed
- (d) guarantee that a student gets a hearing with his/her parents and the Indian counsellor present to help the student defend himself/ herself before being expelled
- (e) not require the student to attend any religious exercises or classes in religion.⁴³

In contrast, the Indian Act contains no language or counselling provisions for Indian education. It provides for truant officers and sets out specific procedures for them.⁴⁴ No mention is made of "keeping parents informed". No consideration is given to hearings of the nature described in (d) above. Consideration is

given to religious denominations of parents with regard to school attendance or teachers,⁴⁵ but no mention is made of voluntary attendance at religious exercises or classes, as is the case with (e) above.

Other new aspects regarding education contained in the proposed Indian Act included tutoring services arranged by parents and paid for by the Department, in the event of non-availability of an approved school (S.390); parental freedom of choice regarding their children's particular off-reserve schooling (S. 397); parental choice of how money was to be transferred, i.e., by voucher or direct billing (S.392); parental approval before the Department could sign any agreement on behalf of a parent or child (S.398); and approval by affected parents before the Department could effect capital expenditures toward any group or agency that was not exclusively controlled by Indians (S.399). These aspects illustrated specific ways in which increased parental responsibility and control in Indian education could be effected.

The educational provisions contained in the Alberta study team's proposed Indian Act reflect the amount of detail which was incorporated into the entire proposal for wholesale revision to the Indian Act. Cardinal described the entire proposal as "a lock, stock, and barrel revision of the entire act."⁴⁶ The study team's proposal received mixed reactions among Indians and virtually no specific response from the federal government.

There was no public discussion of the proposal that we submitted. The government reacted very coolly, and it was our

understanding that they had begun to work on their own draft of an Indian Act to be submitted to the federal cabinet.⁴⁷

By the end of 1974, the National Indian Brotherhood moderated its stance that the Indian Act should be revised in toto and prepared to consider a more piecemeal approach to Indian Act revision through a joint process with the federal government. The Alberta Indian Act Study Team's proposal provided a pool of ideas for Indian representatives to draw upon in formulating the National Indian Brotherhood's proposed revisions to the Indian Act during 1975 through 1978.

Indian Act Revision Process, 1975-1977

Introduction

The Indian Act revision process during 1975 through 1978 was one component of a larger joint consultative process between the federal government and the National Indian Brotherhood. The mechanism that was in place during these years for joint consideration of Indian policy was called the Joint Cabinet/National Indian Brotherhood Committee or the Joint National Indian Brotherhood/Cabinet Committee. The idea for establishing some type of national-level joint mechanism or structure which could serve as a forum for interaction between the government and the Indian Nations in the policy-making arena had been germinating since at least 1970.⁴⁸ At the July, 1971, General Assembly of the National Indian Brotherhood, the Indian Association of Alberta presented a report which outlined the organization and structure of a "Negotiating Committee" to be "a

viable consultative and negotiating mechanism which would ensure full and equal participation for all parties concerned."⁴⁹ A year earlier, the Department of Indian Affairs and Northern Development had proposed to cabinet a tri-level scheme for consultation with Indians on general policy matters. This scheme had received cabinet approval but floundered due to minimal Indian interest throughout 1970-1973.⁵⁰

Increased activity of a more militant nature by various Indian groups during 1973 and 1974 reinforced the need for better communication between the government and the Indian people.⁵¹ At the opening of Parliament on September 30, 1974, a "native caravan" which had been travelling across Canada from Vancouver since July greeted the members of Parliament with a demonstration which culminated in a fracas between caravan members and the R.C.M.P. Under pressure from the opposition in the House of Commons and the media attention placed on the demonstration, Judd Buchanan, the newly appointed Minister of Indian Affairs and Northern Development convened a meeting between the National Indian Brotherhood Executive Council and a group of cabinet ministers on October 9, 1974. Minister Buchanan described the meeting as a "belated call of a special cabinet committee which had been set up to deal with Indian matters in 1972" rather than a meeting set up in reaction to the demonstration on Parliament Hill.⁵²

At the October 9 meeting, the government and Indian representatives agreed that the special cabinet committee in

attendance would meet once or twice a year with the executive of the National Indian Brotherhood "to review Indian problems."⁵³ The agenda items scheduled for the next meeting in February, 1975 included Indian Act revision, economic development and education.⁵⁴ On October 24, 1974, the Minister of Indian Affairs and Northern Development described the October 9 meeting to the House of Commons as "a prototype and forerunner of future consultations at ministerial level with the executive of the National Indian Brotherhood."⁵⁵ At this time, Minister Buchanan reiterated the importance of Indian Act revision as a means to better relations between Indians and the Canadian government.

The government sees these consultations on the Indian Act as the major preoccupation and main focus of its efforts to develop mutually satisfactory relations with the native [sic] people, for their benefit and the benefit of Canadians generally.⁵⁶

Indian Act revision had remained a priority among Indian leaders as well throughout 1974.⁵⁷ However, after the October meeting with the cabinet committee, considerations of Indian Act revision shared the limelight with the structuring of an "Indian claims" process (subsequently renamed "Indian Rights Processes") that was undertaken by the National Indian Brotherhood as part of its initiative to define the ministerial level consultative structure.

Indian Act Revision Process, 1975-76: Formalizing
the Consultative Process

At the second meeting between the cabinet committee and the National Indian Brotherhood Executive Council on April 14, 1975, it was agreed that working groups would be set up on the "Indian Rights Processes" and on the Indian Act. The NIB Executive Council agreed to a piecemeal approach to Indian Act revision.⁵⁸ This shift from the previously held position that Indian Act revision would have to be revised whole was in part a recognition of the lack of consensus reached at the 1974 Annual General Assembly regarding Indian Act revision. It was also due to a guarantee given by the cabinet committee during the April 14 meeting.

We won a vitally important commitment that no change to the Indian Act would be introduced in Parliament by the Department of Indian Affairs, without first having such changes cleared through a joint meeting of the National Indian Brotherhood executive council and the cabinet committee especially set up to meet with the Brotherhood council.⁵⁹

In other words, no unilateral changes could be made to the Indian Act by the Department of Indian Affairs and Northern Development; no changes could be made to the Act without going through a consultative process at the cabinet level.

The structure and processes for the consultative process at the cabinet level were subsequently worked out jointly and approved at the full joint committee meeting on December 12, 1975. The structure received formal approval from Cabinet in February of 1976. The following diagram summarizes the approved structure of the Joint National Indian Brotherhood/Cabinet Committee.

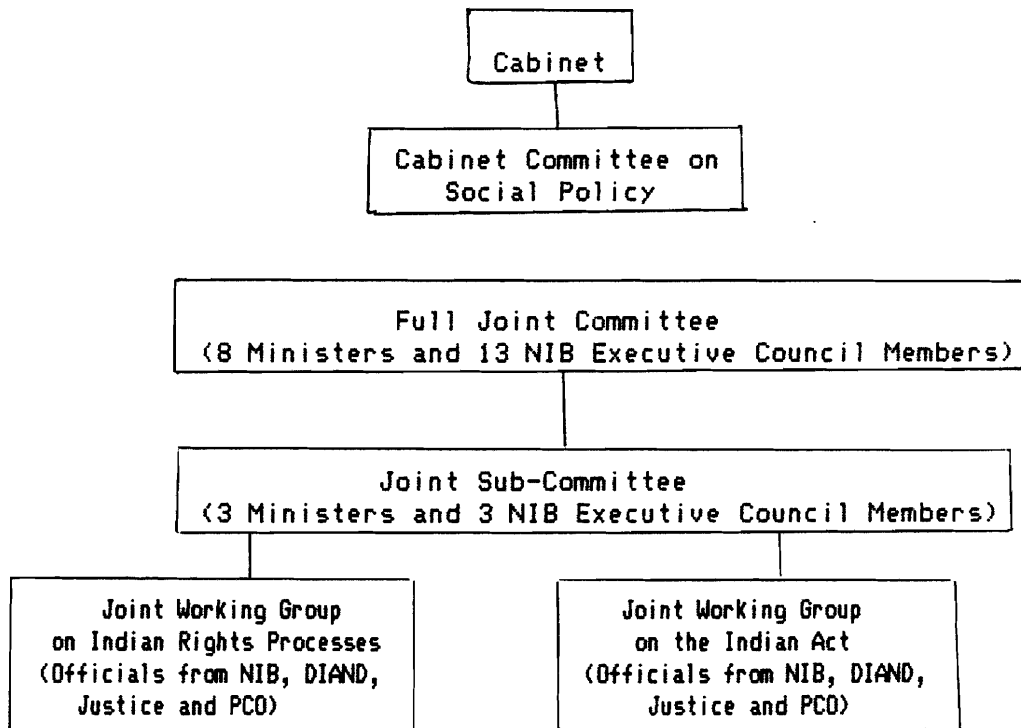


Fig.1. Structure of the Joint Cabinet/National Indian Brotherhood Committee

Taken from Weaver, S. "The Joint Cabinet/National Indian Brotherhood Committee: a unique experiment in pressure group relations." Canadian Public Administration 25 (Summer 1982), p.215.

The working groups were to "perform the detailed work on proposals".⁶⁰ They were to "work on the technical aspects and identification of options".⁶¹ The function of the Joint Sub-Committee initially was to expedite work on Indian claims, since its smaller composition could meet more frequently than the full Joint Committee. However, by 1977 it had become the intermediary between the Joint Working Group on the Indian Act and the full Joint Committee as well.⁶² The top level of the structure, the full Joint Committee, was to be the "political decision-making forum of the joint committee".⁶³ This study analyzes the functioning of the Joint Committee process in terms

of the functioning of the Joint Working Group on the Indian Act, specifically in the area of education revisions. The writer would suggest that Daniels, Weaver, and Ponting & Gibbons offer a more comprehensive analysis of the overall functioning of the Joint National Indian Brotherhood/Cabinet Committee process.⁶⁴

After the April 14, 1975, joint committee meeting, the National Indian Brotherhood Executive Council appointed a committee to work on the Indian Act. This committee, called the Indian Act Committee, had initially comprised the Indians of Quebec Association and the Manitoba Indian Brotherhood, represented by Andrew Delisle and Ahab Spence, respectively. The Indian Act Committee represented the National Indian Brotherhood in the Joint Working Group on the Indian Act. Government representatives in this Joint Working Group included officials from the Department of Indian Affairs and Northern Development and the Department of Justice. The Working Group on the Indian Act agreed on a process for considering revisions to the Indian Act in time for the process to be authorized by the National Indian Brotherhood General Assembly in August of 1975. On December 12, 1975, the proposed process for amending the Indian Act was approved by the Joint Cabinet/National Indian Brotherhood Committee. It received Cabinet approval on February 5, 1976.

Both the National Indian Brotherhood and the Department of Indian Affairs and Northern Development favored grassroots consultation in the Indian Act revision process.⁶⁵ Internally, the National Indian Brotherhood devised an "Indian Act

Consultative Process" to support the Indian Act Committee in its capacity as Indian representative in the Joint Working Group on the Indian Act. The "Indian Act Consultative Process" initially incorporated a Co-ordinator who was to "maintain an ongoing relationship with the members of the Joint Working Group" and to "maintain continuous contact with the provincial liaisons".⁶⁶ Provincial liaisons appointed by each provincial Indian association co-ordinated the consultative process in each province.

Each liaison will be expected to contact all the Indian Bands in the province and to develop extensive communication with Indians through the use of explanatory material, meetings and existing communications facilities.⁶⁷

In addition to developing the liaisons as Indian Act specialists, legal and financial experts and subject-area specialists were utilized as consultants. Policy Analysts were assigned the task of writing the position papers on proposed changes to the Indian Act which evolved from the consultative process. The Indian Act Consultative Revision Process was in full operation by June, 1976.⁶⁸ Figure 2 summarizes how the internal consultative process was to function.

The Indian Act Committee received input from the Bands through the provincial/territorial liaisons and incorporated that input into position statements at the Working Group level. Agreements reached in the Joint Working Group on the Indian Act were to be channelled back through the consultative process for endorsement at the Band level.

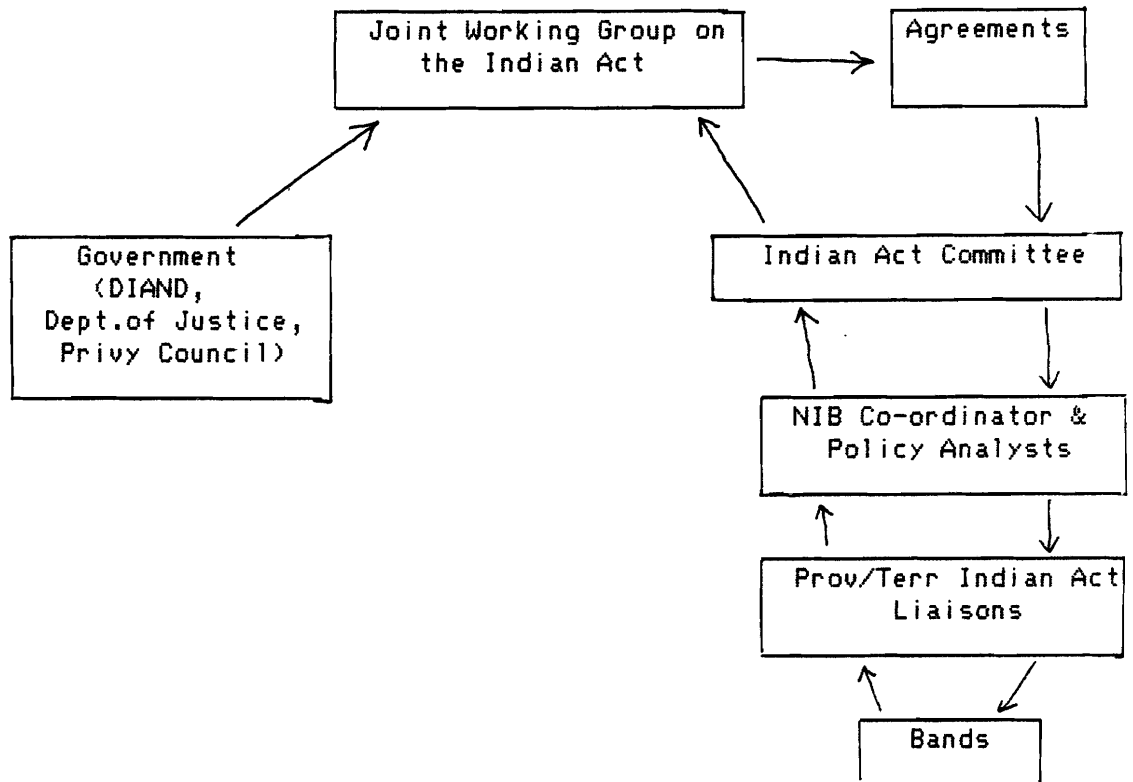


Fig.2. National Indian Brotherhood Indian Act Consultative Process

Taken from DeBassige, Robert H. "Revision Process of the Indian Act." 10 February 1977, p.3 (In Breakin' Camp. Ottawa: NIB, 1977).

In its initial meetings, the members of the Working Group on the Indian Act perceived the necessity of examining specific sections, such as the education sections, simultaneously with the elaboration of the general process for amending the Indian Act.⁶⁹ A sub-group on education was accordingly established. Revisions to the Indian Act concerning education, then, were primarily formulated in the joint sub-group on education and comprised one part of the agenda of the Joint Working Group on the Indian Act.

The Working Group on the Indian Act met a total of seventeen times throughout 1975-1978.⁷⁰

Propositions for amendments to the Indian Act were to follow a Cabinet-approved four-phase plan. Phase I included consideration of the principle of "opting in"; the principle of increased band power; interim education revisions; and taxation. Wholesale revision to the education sections of the Indian Act was to be subsumed in Phase IV.⁷¹ Phase I topics coincided somewhat with the agenda for the Joint Cabinet/National Indian Brotherhood Committee meeting in December of 1975. The pre-set agenda included four areas: Band Government, Taxation, Economic Development and Education. However, the December 12 Joint Committee meeting did not in fact follow this agenda.⁷² Most of the meeting comprised a discussion of the two reports which had been jointly prepared, one of which sought confirmation of the formal structure of the Joint Committee (Indian Rights Processes) and the other which sought confirmation of the overall process for amending the Indian Act. At the conclusion of the meeting, a National Indian Brotherhood Joint Working Group committee member briefly commented on the paper on education prepared for submission to the Joint Committee. It was agreed that education would be the first item of discussion by the Working Group on the Indian Act and the first item on the agenda for the next Joint Committee meeting.⁷³ While the education issue was discussed in the ensuing Joint Working Group meetings, the next full Joint

Committee meeting did not occur until a year-and-a-half later, on July 11, 1977.

The Education Paper which had been prepared for submission to the December, 1975, meeting of the Joint National Indian Brotherhood/Cabinet Committee resulted from the efforts of the Indian Act Education Sub-Committee. The proposed revisions contained in the paper had been presented to the General Assembly of the National Indian Brotherhood in August, 1975. Several recommendations had been made at the General Assembly regarding the paper, and the Assembly passed a resolution which gave the Education Sub-Committee a mandate to proceed with the proposed legislation to the Joint Cabinet Committee.⁷⁴ The Education Paper identified two areas where legislative provisions were needed before the principles contained in the National Indian Brotherhood's education policy paper, Indian Control of Indian Education could be implemented.

There must be protection by law:

- Giving legal recognition to agreements made between the Minister of Indian Affairs and Northern Development and Indian Bands for the total education of Indians; a provision is not now contained in the Indian Act;

- Insuring the on-going funding responsibility of the Federal Government vis-bis those bands who assume local control of education.⁷⁵

Legislative provision was sought whereby the Minister could transfer authority for education to Indian Bands with the assurance that funding of education remained the responsibility of the federal government. Underlying the proposed revisions to the

education sections of the Indian Act was the conviction that "Indian people have a total and unrestricted right to education of any kind at any age in any discipline."⁷⁶ Manuel states that the Education Revisions to the Indian Act were intended to "test the 'mechanism structure' "-- the Joint National Indian Brotherhood/Cabinet Committee-- with regards to determining the bounds of the relationship between Indian Nations and the Canadian government as defined by the National Indian Brotherhood and not as defined as in the past by the federal government.⁷⁷ The issue of the "bounds" of education, or whether federal responsibility existed for provision of educational services to Indians off-reserve or for provision of post-secondary education, remained the main focus of debate in the educational sphere of interaction between the federal government and the Indian Nations throughout 1975-1978.

Negotiating Revisions to Education Sections of the Indian Act, 1977

Introduction

The Joint Cabinet/National Indian Brotherhood Committee met twice in 1977. Education revisions to the Indian Act were discussed at both of these Joint Committee meetings. The proposed revisions prepared by the National Indian Brotherhood Education Sub-Committee which were submitted to the Joint Committee meeting on July 11, 1977, were virtually the same as those that had been submitted to the Joint Committee meeting in December of 1975.⁷⁸ The lack of change in the submission over a year-and-a-half span

of time was in large part due to a lack of government response to the NIB proposed revisions during that time.

The NIB proposed revisions had been formally presented to the Joint Working Group on the Indian Act on October 6, 1975; but there had been no response by either of the government representatives on the Joint Working Group (the Department of Indian Affairs and Northern Development and the Department of Justice).⁷⁹ The Joint Working Group on the Indian Act had the mandate to act on discussion papers prepared by both the government and Indian representatives. Papers were to be exchanged prior to meeting, and issues raised in the papers would be the focus of the actual joint meeting. Lack of response by the government representatives in the Joint Working Group regarding the issues raised in the NIB proposal for education revisions virtually precluded any substantial negotiations on education revision to the Indian Act at the Joint Working Group level prior to the July 11, 1977, Joint Committee meeting.

The Proposed Education Revisions to the Indian Act

Through its proposed education revisions to the Indian Act, the National Indian Brotherhood advanced its conception of legislatively structuring implementation of Indian control of Indian education. This sub-section summarizes the proposed education revisions to the Indian Act which were prepared by the National Indian Brotherhood and submitted to the Joint Working Group on the Indian Act in October of 1975 and to the Joint

Cabinet/National Indian Brotherhood Committee meetings of December 12, 1975 and July 11, 1977. A comparison is made with the Indian Act R.S.c.149.

"Child" is defined in both the proposed Act and the Indian Act as meaning an Indian between six and sixteen years of age. The definition for "schools", however, differs significantly. In the Indian Act, "school" is defined to include "a day school, technical school, high school and residential school" (S.123). In the proposed Indian Act, "school" meant:

any institution or programme which provides for the education of Indians and, without limiting the generality of the foregoing, includes day school, technical schools, vocational schools, high school, residential schools, cultural centres, private tutorship, colleges and universities.⁸⁰

An additional term, "education", was included in the definition section of the proposed Indian Act.

"education" means academic, vocational, technical, professional or cultural advancement or instruction and shall be deemed to include academic, vocational, technical, professional or cultural advancement at the post-secondary level.⁸¹

These two definitions clearly depicted the intent in the proposed Indian Act to make provisions for "education of any kind at any age in any discipline."⁸²

Cited as Section 114, the first section in the proposed Indian Act expanded Section 114 of the Indian Act. The proposed section 114 is hereafter quoted; 114(2) is identical to S.114(2) of the Indian Act except for changing "Indian children" in the latter to "Indians"; 114(3) is identical to S.114(1) of the Indian Act except for the inclusion of the first four words, changing

"Indian children" to "Indians", and for the crucial inclusion of 3(f).

114 (1) The Minister shall provide for the education of Indians out of monies appropriated for that purpose by Parliament.

(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indians.

(3) Except as hereinafter provided, the Governor in Council may authorize the Minister in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education of Indians with:

- (a) the government of a province,
- (b) the Commissioner of the Northwest Territories,
- (c) the Commissioner of the Yukon Territory,
- (d) a public or separate school board,
- (e) a religious or charitable organization, and
- (f) an Indian Band or Bands.

Provided that no agreements made under this section shall affect or pertain to Indians of any band unless that band, by a band council resolution, assents to that agreement.

(4) Any agreement made under this section which is in force on the _____ day of _____, 19__ shall upon a referendum to that effect no longer be applicable to the members of that band.⁸³

114(3)(f) provided the legislative means by which authority over education could be transferred from the Minister to a Band or to Bands. A charter system was to be the method for this transfer; new sections, 123 and 124, of the proposed Indian Act described this charter system. The "opting in" idea was preserved through inclusion of the last sentence of 114(3). 114(4) opened the door for reexamination or termination of existing agreements formulated under the Indian Act.

The proposed Indian Act retained Sections 115-119 of the Indian Act. Section 120 of the Indian Act, regarding juvenile delinquency, was to be deleted. Sections 121-123 were renamed

120-122 and kept intact as well. New sections 123-130 were delineated.

The new sections 123 and 124 described the process for instituting a charter system whereby a Band could "assume control of the education of its members".⁸⁴ If a Band assumed control of the education of its members through section 123, the following stipulations applied: (a) sections 114-122 did not apply to those Band members whose Band had assumed control of education, although a Band member could not be denied the choice to send his or her child to any school (s.125); (b) the Band Council of a Band which had assumed control of education of its members was deemed to have "all the powers and jurisdiction necessary to adequately provide for the education of the members of the band", including "mutatis mutandis, all the powers the Minister and the Governor in Council would otherwise have had under Section 114 to 122 of this Act" (s.126); (c) by Band referendum, agreements made under section 114 could be deemed no longer applicable (s.127); (d) the education of Band members could by vote be returned to the Minister (s.129-130); and (e) the Minister was to make monies available for education "out of the monies appropriated for that purpose by Parliament" and "from time to time, make monies available...for the purpose of financing capital projects upon such terms as he and the band shall agree" (s.128).

The proposed Indian Act required one additional change regarding education. Section 4(3) of the Indian Act had to be repealed. Section 4(3) of the Indian Act stipulates that the

education sections, 114-123, do not apply to Indians who live off-reserve. Since the proposed Indian Act presumed education to be a right of Indians regardless of place of residence, the repeal of S.4(3) was exigent.

Through the modifications to the educational provisions in the Indian Act, the National Indian Brotherhood defined what it perceived as legislatively necessary to effect the policy of Indian control of Indian education. The provision of off-reserve and post-secondary education in the proposed Act meant both of these educational aspects were federal responsibilities. The principle of increased Band powers was implicit in the proposal. The principle of "opting-in", or choice by each Band as to whether changed or new sections of the Indian Act would apply to them, was contained within the proposal as well. The issues raised through the changes to educational provisions in the Indian Act which were proposed by the National Indian Brotherhood became the context for interaction at the Joint Sub-Committee and the Joint Cabinet/National Indian Brotherhood Committee level with regards to provision of education to Indians in Canada.

Joint Cabinet/National Indian Brotherhood Committee Meeting,
July 11, 1977

A few weeks before the scheduled July 11 meeting of the full Joint Committee, a Joint Sub-Committee meeting took place. At this June 27 Joint Sub-Committee meeting, Noel Starblanket, speaking for the National Indian Brotherhood, requested that a "substantive response" regarding the issues raised in the proposed

education revisions be available from the government for the July 11 full Joint Committee meeting. The Assistant Deputy Minister of the Department of Indian Affairs and Northern Development argued that the "real problem" for the Joint Working Group on the NIB proposed revisions lay in the direct linkage of the education revisions to "the question of raising the power of Bands." He stated,

Unless we can put this proposal in the context of Band powers it is difficult to take it piecemeal. I think from the point of view of the Joint Working Group and ourselves, the Joint Working Group has asked to get some approval on this and then they can work on these issues [raised in the NIB education revision proposal].⁸⁵

Mr. Starblanket restated the "problem" as perceived by the Department.

If I can comprehend Mr. Murray's arguments, the process was defined by Joint Cabinet Committee whereby changes would be made to the Indian Act. It didn't include enlarging Band powers. We went to work in good faith. We are here today to present these revisions. I fear if we allow ourselves to get into discussions on Band powers then we have to get into the whole gamut.⁸⁶

In the Department's view, the revisions to the education sections of the Indian Act proposed by the National Indian Brotherhood could not be considered separately from the broader issue of enlarging Band powers on the whole. This latter consideration entailed comprehensive changes to the Indian Act, which contradicted the jointly approved piecemeal approach under which the education revisions had been initially undertaken. In addition, the Joint Committee had not approved consideration of the enlargement of Band powers, which precluded the Joint Working

Group from considering the issue. The view of the National Indian Brotherhood was that their proposed revisions had been completed in good faith and should go before the Joint Committee for a substantive government response.

The Education Revisions to the Indian Act as proposed by the National Indian Brotherhood received a significant amount of attention at the Joint Cabinet/National Indian Brotherhood Committee meeting on July 11, 1977. David Ahenakew spoke on behalf of the National Indian Brotherhood. In his opening remarks, he reiterated what had been stated in December, 1975, namely, that there must be legislative means for the Minister to transfer authority over education to Bands, with the legal recognition of the continued financial responsibility of the federal government over education for Indians. Ahenakew also clearly stated the contention that "education" for Indians included all types of education at all ages for all status Indians regardless of where they resided.

There must be protection in law in...recognizing the constitutional responsibility of the Federal Government to provide funding for education of all types and all levels to all status Indian people, whether living on or off reserves.⁸⁷

The issue of federal responsibility for education of Indians living off-reserve became the focus of discussion immediately after Dr. Ahenakew's opening remarks.

Two government spokespeople at the Joint Committee meeting contended that any consideration of provision of education for

Indians living off-reserve required substantial input from provincial Education Departments.

(Honourable Warren Allmand:) The on-reserve situation is not difficult but off-reserve we would have to have discussion with the provinces.⁸⁸

(Honourable John Roberts:) The off-reserve question is a matter to discuss with the Ministry of Education. We would have to approach the provinces, and see that amendments could be made to the Indian Act. There is an indication that the provinces are involved and it requires that we discuss this with them.⁸⁹

The National Indian Brotherhood spokespeople, Dr. Ahenakew and Noel Starblanket, countered the issue of provincial involvement with the stance that only the federal government has jurisdiction over Indians, by virtue of Section 91(24) of the British North America Act, 1967. No need existed to include provinces in the discussion of the amendments to the Indian Act. They argued that any attempt to transfer authority over Indian education to provinces would be not only a resurrection of the 1969 White Paper policy but also in violation of the Canadian Constitution.⁹⁰

The National Indian Brotherhood representatives contended that if the proposed revisions raised the issue of the Indian "right" to education, including off-reserve and post-secondary educational provisions, then that issue should be dealt with in the Joint Committee meeting. The Chairman of the Joint Committee felt that the Committee did not have sufficient information to consider the issue since the Committee (a) did not "have any papers from the Joint Working Group"⁹¹ and (b) it appeared that the proposed revisions involved some key policy issues which

needed assessment. Accordingly, the Joint Committee members agreed that the proposed revisions be referred back to the Joint Working Group on the Indian Act. In addition, direction was given to the Joint Working Group on the Indian Act to consider the following:

1. the involvement of the Minister of Indian & Northern Affairs;
2. the Minister of Department of Indian Affairs & Northern Development's relative position to Provincial Minister of Education;
3. consultation with the provinces;
4. question of off-reserve education.⁹²

The Joint Working Group on the Indian Act was to prepare a joint report which would "clearly identify the policy issues of concern" raised in the Joint Committee meeting of July 11. The report was to outline the different positions, if any, regarding the proposed amendments to the education sections of the Indian Act.⁹³ The joint report was to be presented at the next Joint Committee meeting scheduled for December 12, 1977.

Preparing for the December 12, 1977, Joint National Indian Brotherhood/ Cabinet Committee Meeting

In March, 1977, a new entity called the Canadian Indian Rights Commission was established to interact in the joint consultative process (Order-in-Council P.C. 1977-702, March 17, 1977). The Canadian Indian Rights Commission, or CIRCC, had been under negotiation since 1975 and supplanted the Indian Claims Commission which had operated since 1969. Two jointly appointed Commissioners, Justice Patrick Hartt and Brian G. Pratt composed the initial Canadian Indian Rights Commission. The terms of

reference for CIRC had been left fairly open, with duties defined as follows:

(a) to facilitate the development of an inventory and classification of existing claims of status Indians and to report thereon to the Joint Committee; and

(b) where directed by the Joint Committee, to assist in the resolution of issues of concern to the Government of Canada and the status Indians of Canada.⁹⁴

The Commissioners consulted with both the government and the National Indian Brotherhood. To clarify expectations of the Commission, the Commissioners submitted to the Joint Committee on July 11 a proposal which identified the activities in which the Commission was likely to engage in the joint consultative process. While the proposal recognized the role of the Commission as an evolving one, its general responsibility fell into five broad areas:

chairmanship and secretarial functions, facilitating an inventory of claims, providing for outside information and opinion, assisting in getting issues to the table, operating a Research Resource Center.⁹⁵

In terms of its facilitative role, the Commission assumed responsibility for the chairmanship of all Joint Working Groups and served as Secretariat for the Joint Committee, the Joint Sub-Committee and all Working Groups under the Joint Committee. In these and additional ways, the Canadian Indian Rights Commission became a major participant in the joint consultative process which transpired during mid-1977 through 1978.

Commissioner Pratt opened the meeting of the Joint Working Group on the Indian Act convened on September 27, 1977. He

announced that until an Executive Director was appointed to the Canadian Indian Rights Commission, an interim chairperson would chair the Joint Working group meetings, with the Commissioners attending meetings in an "observer or listening capacity."⁹⁶ This meeting, the first Joint Working Group on the Indian Act meeting subsequent to the full Joint Committee meeting of July 11, considered the four points directed to the group by the Joint Cabinet/National Indian Brotherhood Committee regarding off-reserve education, consultation with provinces, and the involvement of the Minister of Indian Affairs and his relative position to Provincial Ministers of Education.

To begin the four-point discussion, the National Indian Brotherhood representatives reiterated the position that the federal government had the obligation to recognize that "education is a right which is enjoyed by every Indian within the meaning of the Indian Act, whether located on or off reserve."⁹⁷ They stated that, while the current Indian Act recognized this right in terms of schooling for Indians between the ages of six to sixteen who resided on reserves, the proposed revisions to the Indian Act expanded this right fully and, as well, provided the opportunity for Bands "to exert more control over Indian education."⁹⁸ Officials of the Department of Indian Affairs and Northern Development restated the position that the federal government had the statutory responsibility to provide for elementary and secondary education to Indian children resident on reserves. Any provision of post-secondary educational assistance or financial

assistance to Indians beyond the first-year they were resident off-reserve was "a matter of discretion on the basis of need."⁹⁹ The committee members agreed that the lack of government policy direction on the issue of education as a right of all status Indians had arrested further negotiation on education revisions to the Indian Act. Therefore, it was agreed that the following question be put to Indian leaders and Ministers at the next full Joint Committee meeting:

Is the Federal Government of Canada prepared to accept as its responsibility the provision, on the basis of right, education as defined within the revision to the Indian Act as proposed by the National Indian Brotherhood, to all status Indians whether resident on or off reserve?¹⁰⁰

The most essential prerequisite to advancing the negotiation process regarding education revisions to the Indian Act would be found in the answer to this question, or the resolution of the issue of an Indian right to education.

To clarify the government's perception of the issue of off-reserve education rights of status Indians, the government representatives described three problem areas.

i) An administrative problem would arise in terms of payment of services for Indians off reserve, i.e. whether it be outright payment from the Band to an education authority or in terms of assessment of contribution on the basis of taxes paid to the Provincial Government.

ii) A constitutional problem was anticipated vis-a-vis the Federal Government exclusive jurisdiction over "Indians and lands reserved for Indians"-s.91(24) British North America Act and the Provincial Government's exclusive jurisdiction in the area of education.

iii) A policy issue was identified in that officials felt that to extend federal responsibility in education to off reserve

Indians, would open up the whole question of federal responsibility for off reserve Indians.¹⁰¹

Representatives from the National Indian Brotherhood agreed that the third issue, federal responsibility for all status Indians regardless of place of residence, required a decision at the Joint Committee level. While acknowledging the second issue as potentially problematic, they stated that the federal government already provided education for Indians under Sections 114-123 of the Indian Act, and this authority had been unchallenged by the provinces. "The proposed revisions would merely be an enlargement of this responsibility," they argued.¹⁰² With regards to the first issue, the National Indian Brotherhood representatives "foresaw no greater administrative problems" than under the current system.¹⁰³ Instead of agreements between the Department of Indian Affairs and Northern Development and education authorities, it would be agreements between Bands and education authorities administratively undertaken.

Other issues discussed at the September 27 Joint Working Group on the Indian Act meeting included the proposed Charter system, consultations with provinces, Minister's financial authority, existing federal-provincial agreements, quality of education, and the assumption of control over education by Bands. In the discussion on some of these issues, specific sections of the proposed Indian Act came under scrutiny. In several instances the National Indian Brotherhood representatives agreed to amend particular sections of their proposed education revisions. The

point or points of discussion on each of these six issues are hereunder summarized.

(1) The government representatives agreed with the concept of the charter system after clarification that the charter did not entail a transfer of jurisdiction but rather a delegation of powers from the Minister of Indian Affairs; the ultimate responsibility for education remained with the Minister.¹⁰⁴

(2) All Joint Working Group members deemed consultation with provinces necessary. However, the government representatives declared consultation with provinces prerequisite to any Parliamentary consideration of revisions to the Indian Act. The National Indian Brotherhood representatives maintained that provincial involvement was only necessary after revisions to the Indian Act were legislated and only "as a matter of concluding financial agreements for services".¹⁰⁵

(3) As to the Minister's financial responsibility, the National Indian Brotherhood representatives agreed to change the proposed revisions in terms of relaxing the mandatory nature of the Minister's financing of Indian education and in terms of recognizing the limitations imposed by the Financial Administration Act on band spending. They agreed that when charters were granted, the Minister would "realize a responsibility to provide the necessary funds to Bands to enable the system to work."¹⁰⁶

(4) The National Indian Brotherhood representatives agreed to amend the proposed revisions [proposed section 127] to "allow

existing agreements to live out their life" rather than to allow for unilateral termination of an agreement by Band referendum.¹⁰⁷

(5) The issue of quality control of education, in terms of a Band's own educational system and with regard to services contracted with other educational authorities, was to be addressed within the body of the charter whereby a Band assumed control of education of its members. Bands would be able to effectively bargain for quality services through the availability of funds.

(6) Negotiation included aspects of the assumption of control over education by Bands, with the National Indian Brotherhood representatives agreeing to: "draft a section to reflect a standardized referendum procedure"; allow for Bands to assume all or part control over education of its members rather than only "all the powers" as stipulated in proposed section 123(1); and acknowledge that the Minister had ultimate responsibility in a situation of constant fluctuation within an individual Band regarding the "opting in or opting out" as permitted in proposed sections 123 and 129.¹⁰⁸

The above summary description of the discussion which transpired at the September 27 meeting of the Joint Working Group on the Indian Act suggests that the participants embraced Commissioner Pratt's suggestion at the opening of the meeting that "a new era in the Joint Committee Process" had begun.¹⁰⁹ In the area of education revisions to the Indian Act, productive discussion and negotiation had ensued. The Joint Working Group seemed at last to be functioning as originally intended:

as a body which seeks to clarify issues, areas of general agreement and disagreement stating the appropriate reasons, and articulating alternatives as an active support to the decision makers at the Joint Committee of Cabinet and the National Indian Brotherhood level.¹¹⁰

The proposition that productive consultation and negotiation on education revisions to the Indian Act could be effected seemed realizable, at least at the Joint Working Group level of the Joint Committee Consultative Process.

Another meeting of the Joint Working Group on the Indian Act occurred on October 6, 1977. No discussion on the proposed education revisions to the Indian Act took place at that meeting. However, that item secured a place on the agenda for the next scheduled meeting of the Joint Working Group on the Indian Act on November 4, 1977. A Joint Sub-Committee meeting was scheduled to occur on October 31, 1977. The Canadian Indian Rights Commission recommended that Indian Act revision regarding education be placed on the agenda of the Joint Sub-Committee meeting, based on the Commissioners' belief that "because issues which are considered with a view to revising the Indian Act are also issues of Indian rights, there exists a natural overlap which necessitates the consideration of issues of Indian Act Revision at the Joint Sub-Committee level."¹¹¹ Consideration of education revisions to the Indian Act received approval as an agenda item for October 31.

The question of an "Indian right to education" was the main focus of discussion regarding education revisions to the Indian Act at the Joint Sub-Committee meeting. The Joint Sub-Committee government representatives proved unwilling to comply with the

National Indian Brotherhood representatives' request that the Joint Sub-Committee engage in dialogue on the issue of an Indian right to education. Rather, they maintained that the issue was fundamental and required consideration by the full Joint Committee. The NIB representatives contended that merely raising the issue of an Indian right to education to the next level of the consultative process would be an unnecessary delay. Accordingly, the Joint Sub-Committee directed the Canadian Indian Rights Commission to prepare documentation on the issue of an Indian right to education, including:

relevant data regarding off reserve Indians, the source or basis of the right as put forward by the National Indian Brotherhood, and the implications and policy pros and cons of such a right.¹¹²

The documentation prepared by the Canadian Indian Rights Commission under the above mandate provided the context for consideration of education revisions to the Indian Act at the final Joint Committee meeting, on December 12, 1977.

The final meeting of the Joint Committee on the Indian Act prior to the December 12 Joint Committee meeting occurred on November 4, 1977. The committee members discussed the notion of the Indian right to education, the Joint Sub-Committee's reaction to such a notion at the October 31 meeting, and the possibility of rephrasing the question to be posed to the Joint Committee regarding federal responsibility for the education of status Indians on the basis of "right". The latter consideration was subsequently deferred. The National Indian Brotherhood

representatives reported that they would proceed with the changes to the proposed education revisions to the Indian Act which had been negotiated at the September 27 Joint Working Group meeting and that the amended proposal should be circulating by the end of November. On a final matter, the DIAND representative promised to make available to committee members information respecting financial agreements between the federal government and the provincial governments respecting the education of Indians.

The Canadian Indian Rights Commission Prepares for December 12

Between the October 31 Joint Sub-Committee meeting and the December 12 Joint Committee meeting, the Canadian Indian Rights Commission compiled the information that had been requested by the Joint Sub-Committee regarding the nature of an Indian right to education and the practical implications thereof for the federal government. The Commissioners regarded their compilation as an interim report, especially in light of the time available to them to complete their task, i.e., less than six weeks. They declared that not only was the issue of an Indian right to education itself extremely complex, but many communication problems underlay the consideration of the issue.

The questions posed by the Chairman at the last Joint Sub-Committee meeting are highly complex. Beyond this, the Commissioners have determined that many problems underlie these questions, when considered in terms of all of their elements, and either:

- (a) are not clearly stated and understood by both parties, or
- (b) have not been fully discussed by both parties, in order that there is a frank and full exchange on both sides.¹¹³

The Commissioners suggested that issues, such as an Indian right to education, required unambiguous and comprehensive statements of objectives by both sides; as well, discussions on the issue had to be undertaken in sincerity and with the utmost degree of commitment to engage in a meaningful exchange of ideas. The Commissioners felt that only then could the deliberations on Indian education advance to the next stage of negotiation.

Within their report, the Commissioners proposed a process whereby the Commission would act as facilitator to both the government and the National Indian Brotherhood in articulating, through detailed statements of objectives, the various approaches to the levels of education which to date had proven ambiguous and contentious. These levels of education included kindergarten and nursery schools; post secondary education; cultural education; and special education.¹¹⁴ The Commission recognized that the policy document Indian Control of Indian Education already contained many statements of objectives regarding these levels of education as perceived by the National Indian Brotherhood. However, it noted that there existed no equivalent documentation which contained government objectives and approaches on these matters. The Commission anticipated elaboration, to varying degrees, by both sides. In addition, the Commission proposed to organize terms of reference and oversee the work of third parties, if any particular matters required independent research and analysis. Through their proposed process, the Commission believed that they would be able

to present to the Joint Sub-Committee a comprehensive statement on the issue of an Indian right to education.

The Commission then will place before the Joint Sub-Committee, a detailed statement, representing the view of both parties, on objectives, alternative acceptable approaches, implications of such approaches, and differences that must be resolved before Indian control of Indian education can be made a reality through revisions to the Indian Act.

It is the opinion of the Commission that, when this process has advanced through these stages, the Joint Committee and Joint Sub-Committee will be able to deliberate in a way that is manageable for both sides, and in a form that creates the opportunity for advancing to a resolution of the education question, inclusive of all its complex parts.¹¹⁵

The Commission felt that the proposed process could lead to deliberations at the Joint Sub-Committee level within six months' time.

In addition to the proposed process outlined above, the material prepared by the Commission for the December 12 Joint Committee meeting included a report on "Basic Expenditures Necessary were the Federal Government to Assume Responsibility for Status Indians' Primary, Elementary and Secondary Education". This report utilized 1976-77 data for direct federal operating and capital costs and for actual costs through federal-provincial tuition agreements. To these expenditures were added an estimated annual cost incurred by provinces for provision of education to off reserve Indians (\$45 million for operations and maintenance; provincial capital cost data was not available for the report) and estimated replacement costs of \$412 million. This latter figure was based on the Department of Indian Affairs and Northern Development estimated per pupil replacement cost of

\$6,600, or the estimated amount which "would be incurred in bringing all off-reserve status Indian education under an exclusively Federal system."¹¹⁶ The report noted that the lack of a definition of "education" made the estimated costs difficult to project.

The precise content of education is a variable which leads to a variety of alternative calculations based upon different definitions of the kind and quality of education desired.¹¹⁷

In spite of this definitional problem and other difficulties encountered in estimating costs, the Commission's report provided a response to the Joint Sub-Committee's directive to present the Joint Committee with some practical implications if the federal government assumed responsibility for education of all status Indians regardless of place of residency.

The other main aspect of the Joint Sub-Committee's directive to the Canadian Indian Rights Commission on October 31 was that the Commission prepare information on the source or basis of the right to education which was claimed by the National Indian Brotherhood. In investigating the nature of an Indian right to education, the Commission utilized research that had already been undertaken by Indian organizations.¹¹⁸ The Commission's report, as an illustration of an Indian position on the nature of the Indian right to education, had appended a paper prepared by the Federation of Saskatchewan Indians, entitled "The Indian Right to Education".¹¹⁹ The Federation of Saskatchewan Indians' position paper [hereinafter FSI position paper] cited Treaties as the primary source for an Indian right to education. The FSI position

paper contended that Section 91 Head 24 provided for two separate classes, Indians and Indian lands. The section did not provide for Indians on Indian land. Thus, place of residency--on reserve or off-reserve--did not have any bearing on federal responsibility; the education of off-reserve Indians remained a federal responsibility. It was further contended that the Federal government's responsibility is a fiduciary trust responsibility for Indians. The argument that education is an exclusive provincial power did not sustain in lieu of the fact that the federal government provides education for individuals associated with the military and in penitentiaries. In addition, the position was advanced that Section 88 of the Indian Act stipulates that provincial laws apply if there are no Treaty provisions or federal legislation occupying that subject domain; however, Treasury Board Minutes, as government regulations or subordinate legislation, covered the subject matter of education and, accordingly, provincial laws regarding education of Indians did not apply. In areas where Treaties had not yet been negotiated, it did not follow that there was no Indian right to education; it meant that there had not yet been a relationship established to secure Treaty rights, including the right to education. The FSI position paper provided one provincial association's viewpoints in 1977 regarding education as a right of Indians. It served to illustrate alternative ways of perceiving the Indian Nation - Canadian government relationship in the sphere of education. The Canadian Indian Rights Commission utilized this research paper to

fulfill its directive to describe to the Joint Committee the nature of an Indian right to education.

The Joint National Indian Brotherhood/Cabinet Committee Meeting,
December 12, 1977

At the December 12, 1977, Joint Committee meeting, the issue of an Indian right to education comprised the main focus of discussion regarding the education revisions to the Indian Act. In his opening remarks, Starblanket reiterated the National Indian Brotherhood's position "that education is a right for the Indian people in Canada which flows from the sources of aboriginal rights, the Royal Proclamation of 1763, the British North America Act, the Treaties, and the Indian Act."¹²⁰ The National Indian Brotherhood representatives expressed their desire to focus the discussion on implementation of the Indian right to education.

Government representatives submitted that "the government was not prepared to accept the definition of right as put forward by the National Indian Brotherhood as it was one which is not applicable to Canadians generally."¹²¹ The government's position was stated as not being an outright rejection of the Indian assertion of education as a right. Rather, the government representatives contended that the available documentation as presented by the National Indian Brotherhood did not convince them of that right. The suggestion was made for referring the issue to a third party, such as the Canadian Indian Rights Commission, in order to explore the possibility of making the case for the Indian right to education "more convincing."¹²² One National Indian

Brotherhood representative expressed the opinion in the meeting that this government response clearly indicated that the government "rejects the treaty provisions regarding Indian education."¹²³

Several suggestions were made as to how to break the apparent impasse reached in the Joint Committee regarding the Indian right to education. These included: forwarding to Cabinet the question posed to the Joint Committee regarding an Indian right to education; utilizing the judicial system to determine the nature of the Indian right to education; or standing the issue subject to further deliberation internally. Agreement was reached to stand the issue.

Mr. Starblanket agreed to stand the issue, discuss it further with his colleagues and then inform the Chairman of the National Indian Brotherhood's ultimate decision as to an acceptable position on the issue of education.¹²⁴

The issue of an Indian right to education was not resolved at the final Joint Committee meeting. Indian leaders' frustrations with the government's deferment of consideration of the substantive issue of an Indian right to education surfaced at the end of the December 12 meeting when Starblanket stated that the National Indian Brotherhood "would not be prepared to discuss the women's rights issue [Section 12(1)(b) of the Indian Act] until the government gives an answer to the issue of the Indian right to education."¹²⁵ Neither of these issues were to be resolved through the Joint Committee mechanism, as the Joint

Cabinet/National Indian Brotherhood Committee ceased functioning in April, 1978.

Changing Directions: Indian Act Revision Process, 1978

Introduction

Several key events had significant impact on the Indian Act revision process during 1978. The National Indian Brotherhood withdrew from the Joint Cabinet/National Indian Brotherhood Committee in April. The Prime Minister tabled Bill C-60, an Act to Amend the Canadian Constitution, in June. The Department of Indian Affairs and Northern Development released a proposed revision to the Indian Act, with the intention of tabling it in Parliament by the fall of 1978 with or without NIB endorsement. Coupled with specific measures taken by the Department of Indian Affairs and Northern Development and by the National Indian Brotherhood which specifically impacted Indian educational policy, these events greatly diminished the NIB's attitude toward the value of using the Indian Act revision process as a means to implement educational policy.¹²⁶

The Demise of the Joint Cabinet/National Indian Brotherhood Committee

The confrontation on the issue of Indian rights at the December 12, 1977, Joint Committee meeting was consequential in cementing an attitude change toward the value of the whole Joint Committee process as it had evolved since 1974. Weaver states that

the confrontation left each side angry, and convinced the other was basically untrustworthy: the NIB for 'breaking its promise' on an agenda agreement, and the government for revealing its long-suspected opposition to Indian rights.¹²⁷

Attitude shifts among various Indian organizations toward the Joint Committee process had already emerged in late 1977. In November, the political leaders of the three Prairie Indian organizations attempted to gain approval for an additional "Prairie Treaty Rights" Joint Working Group to function in the same way as the Joint Working Group on the Indian Act and the Joint Working Group on Indian Rights Process. The political leaders within the three Prairie Indian organizations felt that Prairie Treaty issues, including the Treaty right of education, were not being adequately addressed in the national Indian position statements or in the negotiation process within the Joint Working Groups.¹²⁸ By February, 1978, the three Prairie Indian organizations formed their own regional association to pursue Treaty claims outside the Joint Committee structure. This association was called the "Prairie Indian Rights & Claims Processes". However, formal separation of the Prairie Indian organizations from the Joint Committee process did not occur during the duration of the Joint Committee's existence.

The National Indian Brotherhood officially withdrew from the Joint Committee occurred on April 14, 1978. The Executive Council of the national Indian organization voted unanimously "to discontinue meeting with the Federal Cabinet."¹²⁹ Starblanket stated:

In over five years of existence, the National Indian Brotherhood/ Cabinet Committee failed to produce major decisions. The Executive Council unanimously agreed in a full Executive Council meeting...that the National Indian Brotherhood/Cabinet Committee meetings had degenerated into time wasting gab sessions.¹³⁰

We've brought many comprehensive Indian policy recommendations to the Cabinet. We have not received one major decision from them in the entire time we've been meeting. Three years ago, for example, we presented the Cabinet with a policy on Indian Control of Indian Education. They have yet to make a decision on that policy....The government has ducked criticisms over their lack of Indian policy by claiming to be involved in meaningful discussions with the NIB- Cabinet Committee. It's time to explode that myth. The Cabinet's wheels have been wildly spinning but the discussions have gone nowhere.¹³¹

With the collapse of the Joint Committee process, the issue of Indian rights, including the Indian right to education, remained unaddressed.

The Move to Patriate the Canadian Constitution

The urgency of resolving the issue of Indian rights, or "special status" of Indians, and the issue of aboriginal rights had been raised in the mid-seventies not only in terms of the Joint Committee process but also in terms of the federal government's endeavors to patriate the Constitution to Canada. The National Indian Brotherhood made a presentation to the Joint Committee meeting of July 11, 1977, stating its position on patriation of the Constitution. The National Indian Brotherhood demanded inclusion of Indians in discussions on the issue of patriation. This necessary measure would ensure that no shifts in jurisdiction over "Indians, and Lands reserved for Indians" occurred and to ensure

That the rights of Indian people as well as the unique position of the Indian people to the Federal Government be entrenched in any new or varied Constitution of Canada so that any amendments to the constitutional status of Indians would be rendered null and void without the consultation with and the consent of the Indian people of Canada.¹³²

The concern of the National Indian Brotherhood over the move to patriate the Constitution was reflected throughout 1978. In the President's April, 1978, announcement of the decision to withdraw from the Joint Committee process, he remarked "that Indians had been deliberately excluded from federal provincial constitutional discussions even though the BNA Act specifically mentions Indians and Indian Lands."¹³³ In March of 1978, the President of the National Indian Brotherhood made a presentation to the Task Force on National Unity, urging that any attempt to patriate the Constitution be done "with the assurance that the Constitutional position of Indians will only be changed to strengthen our place in Confederation, not eliminate it".¹³⁴ A presentation was also made by the President to the Joint-Senate/House of Commons Committee on Bill C-60 in August of 1978. The position of sovereignty of Indian Nations was advanced in this statement; the process of patriation of the Constitution was viewed to be an opportunity to develop a new relationship between Indian Nations and Canada on the basis of sovereignty of Indian Nations.¹³⁵

With the tabling of Bill C-60 in the House of Commons in June, 1978, much of the energy and attention of the Indian political leaders was channelled toward securing the position of Indians in a potentially new Constitutional arrangement. In terms

of Indian Act revision, the Department's proposed changes to the structure of Band government were viewed in a new light, i.e. as having the potential to make Band government equivalent to municipal government, which implied that Bands did not have an inherent right of self-government but rather only that governmental power which was permitted by the federal government.¹³⁶ The position that Bands had not given up their inherent right to jurisdiction over Indians and Indian lands through the Treaty process was increasingly articulated by various Indian organizations.

Indian Treaties did not 'extinguish' aboriginal rights to Indian jurisdiction or to Indian lands. The Treaties were simply to define the relationships between Indian Governments and the Canadian Government and to define terms and conditions which would govern the shared use of resources and lands.¹³⁷

One of the terms or conditions of the relationship established through Treaties was the provision of educational services to Indians. The implications for education stemming from the stance of Indian sovereignty included the following propositions. The regulation of educational services to Indians was a matter of Indian jurisdiction which was not based on the transfer of Ministerial authority through the Indian Act but rather on an inherent right to self-government. The decision-making power on the nature and extent of educational provisions-- educational policy decisions -- belonged to Indians and did not rest within the restrictions imposed through the Indian Act. The sovereignty position advanced by various Indian organizations in 1978 coloured the Indian response to the Department of Indian Affairs and

Northern Development's proposed revisions to the Indian Act, released in draft form in June of 1978.

The Department of Indian Affairs and Northern Development Proposed Revisions to the Indian Act, 1978

The 1978 revisions to the Indian Act were prepared by the Department of Indian Affairs and Northern Development. They appeared in draft form in June of 1978 and as "discussion papers" in September of 1978. These Indian Act revisions were intended to serve as another stage in the revision process, a "pulling together" to aid "discussion on a broader basis."¹³⁸ The Department intended the revisions to be reflective of the intensive involvement of Indian peoples in the Indian Act revision process of the mid-1970's.

The major emphases in the paper are derived from proposals received from Indian representatives, have been written to incorporate essential elements contained in Indian ideas, and are designed to advance the major expressed desire of Indian people--to exercise Indian control over Indian government, Indian lands, Indian education and other aspects of Indian socio-economic development.¹³⁹

Accordingly, the emphasis in the proposals revolved around the three basic principles for Indian Act revision which had been advocated by Indians since the 1975 Annual General Assembly of the National Indian Brotherhood. These principles consisted of (a) the principle of "opting in", or freedom of choice by individual Bands as to whether they would remain under the old Indian Act or incorporate aspects of the new Indian Act at times of their own choosing; (b) the utilization of a charter system for Band government as well as for transfer of education control; and (c)

the principle of a piecemeal, or phased, approach to Indian Act revision. Phase I embodied the areas of revision which had been incorporated in the 1978 proposals: tribal government; education; land surrenders; hunting, fishing, and trapping rights; membership; and anachronisms in the current Indian Act.

The Department intended the proposed revisions to be presented in Parliament and subsequently reviewed "by provincial governments and other interested Canadians."¹⁴⁰ As a matter of procedure, they would be referred to the House of Commons Standing Committee on Indian Affairs and Northern Development. This Committee would be charged with the responsibility of meeting directly with Indian people across Canada, whereby Indian people would "have the chance to meet face-to-face with those Members of Parliament who would be most influential in recommending the form of Indian Act changes to the House of Commons."¹⁴¹ After extensive consultation with Indians across Canada, the Committee would make recommendations to the Minister regarding the proposed amendments. The Minister would then make the decision as to the form the amendments would take in their resubmission to the government.¹⁴²

At the August, 1978, General Assembly of the National Indian Brotherhood, many delegates objected to the proposed process described above in that Indian reactions to the proposed amendments would be solicited after the changes would have already been tabled in Parliament.¹⁴³ Several political leaders thought it untimely for Indian Act revision in light of the broader issue

of Constitutional reform and in terms of the Indians' concern for safeguarding Indian rights in any proposed changes to the Constitution.¹⁴⁴ The issue of Indian sovereignty and who had the right to define Indian government and Indian membership negated the idea of defining Indian government and Indian membership through revisions to the Indian Act.

The critical concern by Indian leaders over the Department's proposed revisions to the Indian Act regarding Band government and Band membership overshadowed the proposed revisions to the education sections of the Indian Act. However, in keeping with the specific subject matter of this study, the Department's proposed revisions to the education sections of the Indian Act are hereunder discussed. Existing education sections of the Indian Act were to be modified, and several new sections were to be added as well.

The title of the section of the Indian Act containing the educational provisions was to be changed from "Schools" to "Education". Several new definitions were to be added, including "continuing education", "special education", and "language of instruction". Section 114 was to be modified to include authorization for the Minister to enter into agreements for the delivery of educational services to Indians with the following entities:

- i) an Indian Band or Bands,
- ii) private as well as public or separate school board,
- iii) universities, colleges, and technical or vocational institutes,
- iv) other Federal Government departments.¹⁴⁵

Sub-item (iii) required a new section whereby the Minister would be authorized to "make regulations to provide for the support of Indians in continuing education programs."¹⁴⁶ This new section would give the Minister legislative authority over post-secondary education for Indians, thereby changing the category of funding for post-secondary education for Indians from discretionary to non-discretionary funding. As well, post-secondary education for Indians would be subject to less variability or mutability as it was when regulated through Departmental guidelines.

With regard to educational agreements, approval was required from the "appropriate level of tribal government (Band, District or Regional)" for all agreements exclusive of those made with Bands. For agreements made with Bands, "provisions relating specifically to the granting of EDUCATION CHARTERS" were to be written into a revised Indian Act.¹⁴⁷ These two inclusions were consistent with the notions included in the National Indian Brotherhood proposed revisions of 1974-77. Provision of educational services for Indians residing off-reserve was to be considered an aspect of Education Charter negotiations.¹⁴⁸ Making educational provisions for Indians residing off-reserve an element of negotiation contravened the stance of an Indian right to education regardless of place of residence; the latter position had been embodied in the 1974-77 revisions prepared by the National Indian Brotherhood.

Section 115 of the Indian Act was to be expanded to include authorization for the Minister to make regulations regarding the

"quality of educational services", including regulations for teacher qualifications, curriculum development, program accreditation, and professional supervision. This expansion of Ministerial powers suggests that the potential for Band control or regulation of these educational aspects would be severely limited. Section 115 was also to be expanded to include authority for the Minister to enter into agreements for the support and maintenance of Indian children attending special schools, such as schools for the physically handicapped.

The age of compulsory school attendance was to be lowered from seven (as contained in Section 116) to six. The authority in Section 116 for the Minister to require attendance for Indian children up to the age of eighteen in special circumstances was to be rescinded.

In Section 117, excusable absences are delineated. The term "husbandry" in Section 117(b) was to be changed to "traditional hunting, trapping or other seasonal family support activities". The requirement for "permission in writing of the superintendent" for excusable absences not longer than six weeks for purposes of "traditional hunting, trapping or other seasonal family support activities" was to be changed to "by prior arrangement with the appropriate Education authority". This alteration seems to provide for local control of student absences not exceeding six weeks.

Truancy, as dealt with in Sections 119 and 120, was to be changed "to emphasize the positive encouragement of good school

attendance behavior".¹⁴⁹ Accordingly, the Minister was to make regulations "to ensure the attendance of Indian children at school" rather than to have provision in the Indian Act for a system of appointed truant officers and powers thereof, as contained in Section 119. Section 119(2)(a) was to be changed so that there was "no authority for any person involved in attendance supervision to enter an Indian home without the consent of the residents". There was to be no "double penalty" for parents or guardians found guilty of a school non-attendance offence, i.e. fine and imprisonment, as contained in Section 119(3). Sections 119(4),(5), and (6), regarding further notices for noncompliance with non-attendance offences, tardiness, and custody of absentee children, respectively, were to be repealed. Section 120, regarding expelled, suspended and habitually absent Indian children being deemed juvenile delinquents under the Juvenile Delinquents Act R.S. c.149,s.119, was to be repealed as well.

A sub-section was to be added to Section 121 to permit Band-approved Elders to instruct in "traditional Indian religious beliefs", as part of the provisions made within the Indian Act regarding religious denomination of teachers and religious instruction. Inclusion of this new sub-section suggests that a separation of "traditional Indian religious beliefs" from the rest of school subject matter was deemed necessary by the Department. This sub-section could potentially deter a wholistic approach to education which would infuse traditional Indian religious beliefs into the rest of school subject matter.

With the exception of the deletion of Section 120 regarding juvenile delinquency, the Department's proposed revisions to Sections 115 through 121 were novel to prior revisions proposed by the National Indian Brotherhood. It will be recalled that the Indian Act revisions submitted in 1975 and in 1977 to the Joint Cabinet/National Indian Brotherhood Committee retained Sections 115-119, 121-123. The nature of the Department's proposed revisions to Sections 115-123 suggest to this writer that areas which were not previously covered in the Indian Act, such as curriculum, accreditation, Indian traditional religious beliefs, are areas which would naturally fall under the auspices of a Band which took control of its educational system under the unrevised Indian Act. The inclusion of these subject matters in a new Indian Act would mean stricter governmental regulation of these educational aspects for those Bands choosing not to negotiate for educational control through the Band Charter system.

In the Department's proposed revisions, a new section was added regarding the use of Indian languages in schools. Provision for the usage of Indian languages in schools had been included in the 1974 Indian Act revisions prepared by the Indian Association of Alberta. The Department's new section on usage of Indian languages in schools made provision for recognition of Indian languages as approved languages of instruction at the kindergarten and elementary school level. Adoption of an Indian language as the official language of instruction at these levels required prior Band approval. Band approval was to include a requirement

for certain standards, "e.g. availability of instructional materials and teachers, the role of English or French as a second-language subject, etc."¹⁵⁰ The new section also provided recognition of Indian languages as approved languages of study and enrichment at the elementary and secondary level.

The Department based its proposed revisions to the Indian Act sections encompassing education of Indians on three grounds "in furtherance of the policy of Indian control of Indian education":

(a) The need to cater for the rapid development in the local control of Indian education by Band Councils.

(b) The need to reflect present-day concerns in the area of child and parental rights, the invasion of privacy, etc. in matters of school attendance, truancy, etc.

(c) The need to improve and clarify the administration, quality and scope of education for Indians.¹⁵¹

On these grounds, the Department incorporated the proposed educational revisions to the Indian Act into the total Indian Act revision proposal which was released in June and September of 1978.

The 1978 proposed revisions to the Indian Act died with the change of governments in 1979. As of 1988, no major changes to the education sections of the Indian Act have occurred, with two exceptions: (1) Section 120 was repealed by virtue of the Young Offenders Act passed in 1982 which nullified the Juvenile Delinquency Act; and (2) in the revised Indian Act (1985) a new subsection was unilaterally added to Section 119, the truancy section, which (a) required that a warrant be obtained by a truant officer prior to entering a dwelling, (b) set forth the conditions

under which a justice of the peace could issue a warrant, and (c) set forth stipulations regarding the use of force in executing a warrant. Otherwise, the major efforts which occurred during 1974 through 1978 by both the National Indian Brotherhood and the federal government toward revision of the educational sections of the Indian Act have remained fallow.

Alternatives to the Joint Cabinet/National Indian Brotherhood Committee as a Forum for Indian Act Revision

After the National Indian Brotherhood withdrew from the Joint Cabinet/National Indian Brotherhood Committee process in April of 1978, a viable alternative process for Indian Act revision was sought. Funding for Indian Act revision was withheld pending approval of alternate negotiating mechanism.¹⁵² Several alternative mechanisms suggested were: an Indian Act Sub-Committee of the House of Commons Standing Committee on Indian Affairs;¹⁵³ a "local government approach" which would operate as a negotiated Charter system through amendment of Section 4 of the Indian Act to give the Governor in Council "the power to enable bands or groups of bands to enact tribal constitutions which would replace or displace the Act or those sections suspended by the Governor in Council";¹⁵⁴ a Task Force Approach spearheaded by National Indian Brotherhood Policy Analysts serving as "Commissioners";¹⁵⁵ and a Special Joint Committee of the Senate and the House of Commons. This latter Joint Committee approach was the subject of debate in the House of Commons on June 15, 1978.

In that debate, in defence of the establishment of a Special Joint Commons/Senate Committee to review provisions of the Indian Act, Mr. J.R. Holmes (Lambton-Kent) argued that the defunct Joint Cabinet/National Indian Brotherhood Committee was inappropriate as an effective structure to deal with Indian Act revision.

The joint NIB cabinet committee, by its very nature, is shrouded in secrecy, and this prevents members of parliament, the Indian community, and the public from assessing the motives and actions of government.¹⁵⁶

In opposition to the establishment of such a Committee, Mr. B. Keith Penner (Thunder Bay) contended that the House of Commons Standing Committee on Indian Affairs and Northern Development already had the responsibility for overseeing Indian Affairs and could easily be assigned more investigative tasks, such as reviewing the provisions of the Indian Act. Furthermore, he denounced the formation of a new special committee as a "slap in the face" to Indian leaders in Canada.

In fact, to be blunt, it is something akin to a slap in the face to the Indian leaders in this country because it says in effect that all of the good, hard, productive, difficult work that they have done is of no account, that nothing has happened, and that a parliamentary joint committee should get down to work and do something because the Indian leaders have not done anything up to this point. I reject that suggestion and I say it is unfair, untrue, and a slap in the face to the Indian leaders of Canada.

The process of actual consultation with the Indian people and the task of reaching agreement on a revision of the Indian Act is already well under way....It has gone beyond the stage where a travelling joint committee could serve a very useful purpose.¹⁵⁷

Shedding further light on why such a travelling joint committee might prove useful to Indian people, Mr. Doug Neil (Moose Jaw) stated,

As the hon. member for Lambton-Kent pointed out earlier, we are presently in a debate and a dialogue on national unity. We concern ourselves about bilingualism and multiculturalism and yet we are overlooking the indigenous people of our country, the people who were here long before the white man. I suggest that a committee such as we have proposed in this motion would receive wide media coverage in its travels. It would perhaps make Canadians aware of a matter which at the present time they know little about.¹⁵⁸

The idea of providing a forum where views on the Indian Act could come under the full scrutiny of public opinion rather than be contained in camera appeared to be a primary factor for proposing a special joint Commons/Senate Committee to investigate Indian Act revision. However, the motion to establish a special joint Commons/Senate committee on the Indian Act did not succeed.

For the remainder of 1978, the Minister of Indian Affairs continued to advocate the process for Indian Act revision which had been proposed in the Department's September, 1978, discussion papers.¹⁵⁹ That process was to engage the House of Commons Standing Committee on Indian and Affairs and Northern Development in travelling across Canada to meet with Indians, in consultation on revision to the Indian Act. As well, the Minister continued to meet with individual Indian leaders on the matter.¹⁶⁰ The Minister continued to hold Indian Act revision as a top priority, although priorities among Indian leaders had shifted to the broader issue of Constitutional revision.¹⁶¹

Chapter Summary: Implementation of Educational Policy Through
a Consultative Process of Indian Act Revision

In 1973, the federal policy for provision of education to Indians within Canada was stated to be a policy which subsumed Indian control of Indian education. In order to implement such a policy, it was deemed necessary to create legislative means whereby Bands could assume control over their respective educational systems. The legislative instrument which provided for education of Indians was the Indian Act. Wholescale revision to the Indian Act had been under consideration since 1968-69. In 1974, agreement had been reached between the federal government and the Indian leaders to create a joint national-level mechanism to deal with policy matters in Indian affairs. Through this joint negotiating structure, the process for Indian Act revision was undertaken. Accordingly, the process for negotiating revisions to the education sections of the Indian Act was incorporated as one aspect of the larger consultative process.

In the three-and-a-half year span of operation of the Joint Cabinet/ National Indian Brotherhood Committee process, several proposals regarding education revisions were considered, including the 1974 Alberta Indian Act Study Team's proposal and the 1975 proposal prepared by the National Indian Brotherhood Education Sub-Committee. Actual negotiations on revision to the education sections of the Indian Act did not take place until mid-1977, when the Department of Indian Affairs and Northern Development finally formally responded with a written submission to the Joint Working

Group on the Indian Act. The issues raised by the National Indian Brotherhood's proposal and the DIAND's submission regarding provision of education to Indians were summarized by the Canadian Indian Rights Commission in late 1977 in preparation for deliberation at the top level of the Joint Committee structure. At the final meeting of the Joint Committee, in December of 1977, the primary education issue, the Indian right to education, was not resolved. The education issue was referred back to the Joint Working Group level for more clarification and discussion.

The Joint Committee structure fell apart in April of 1978, with the unilateral withdrawal of the National Indian Brotherhood from the joint consultative process. The Indian Act Revision process was basically static for the remainder of 1978, due to the withholding of funds for Indian Act revision until an alternative negotiating structure was found. In the meantime, the Minister of Indian Affairs and Northern Development released the Department's proposed revisions to the Indian Act in June of 1978. These revisions and the process for consultation with Indians regarding the amendments, i.e. a travelling SCIAND Sub-Committee, were advocated by the Minister until the change of government in 1979. The primacy of Indian Act revision had somewhat diminished within the National Indian Brotherhood by mid-1978, as attention shifted to the issue of patriation of the Canadian Constitution and its implications for Indians' constitutionally recognized special status and the rights derived thereof as well as for the broader recognition of indigenous peoples' relationship to Canada in terms

of aboriginal and Treaty rights. Many Indian leaders subsequently advocated a "no change" approach to the Indian Act until these broader and more fundamental issues were resolved.

CHAPTER FOUR ENDNOTES

1. Sally Weaver, Making Canadian Indian Policy (Toronto: University of Toronto Press, 1981), 13-15.
2. Ibid., 13.
3. Ibid., 18-19.
4. House of Commons, Debates, 11 December 1967, 5204.
5. Weaver, Making Canadian Indian Policy, 49.
6. Ibid.
7. Ibid., 60.
8. Ibid., 64.
9. George Manuel and Michael Posluns, The Fourth World: An Indian Reality (Don Mills, Ontario: Collier-Macmillan Canada Ltd., 1974), 168.
10. Union of Ontario Indians, "Position Paper," 6 June 1972, 1.
11. "Statement of the Government of Canada on Indian Policy 1969" (Ottawa: Queen's Printer, 1969), 6.
12. Ibid., 5.
13. Weaver, Making Canadian Indian Policy, 173.
14. Sally Weaver provides an excellent analysis of the process which created the 1969 White Paper in her book, Making Canadian Indian Policy (Toronto: University of Toronto Press, 1981).
15. Indian Chiefs of Alberta, Citizens Plus (Edmonton: IAA, 1970), 12.
16. Harold Cardinal, The Rebirth of Canada's Indians (Edmonton: Hurtig, 1977), 89.
17. Ibid., 90.
18. Attorney General of Canada v. Lavell, Issac v. Bedard (sub nom. Lavell v. A.-G. of Canada) (sub nom. Bedard v. Isaac), (1974) S.C.R. 1349, (1973) 38 D.L.R. (3rd) 481, 23 C.R.N.S. 197, 11 R.F.L. 333 (S.C.C.)
19. Cardinal, 89.
20. Ibid., 112.

21. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 6 March 1973, Issue Number 5, 45.

22. Ibid.

23. Ibid.

24. Federation of Saskatchewan Indians, "Our Way", The Saskatchewan Indian Supplement (August 1973): 1.

25. Jean Chretien to George Manuel, 28 March 1974, 1.

26. Ibid.

27. "NIB Resolution on Indian Act," Indian Record 36 (Nov.-Dec. 1973): 12.

28. Jean Chretien to George Manuel, 28 March 1974, 1.

29. Ibid.

30. Ibid., 2.

31. Indian Association of Alberta (Harold Cardinal) to President, National Indian Brotherhood, 6 August 1974, 2.

32. Ibid., 1.

33. Ibid., 2.

34. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 3 December 1975, Issue Number 31, 8.

35. Cardinal, 116.

36. Indian Association of Alberta (Harold Cardinal) to President, National Indian Brotherhood, 6 August 1974, 2.

37. The writer would suggest that a detailed description of the entire 1974 Alberta Indian Act Study Team's proposal is available in Harold Cardinal's The Rebirth of Canada's Indians (Edmonton: Hurtig, 1977), pp.89-136.

38. Indian Association of Alberta Indian Act Study Team, "Proposed Revisions to the Indian Act", 6 August 1974, Section 360.

39. Federation of Saskatchewan Indians, "Special Rights in Education," The Saskatchewan Indian Supplement (May 1973): 20-21; Federation of Saskatchewan Indians, "Our Way", The Saskatchewan Indian Supplement (August 1973): 33.

40. Indian Act RSC 1970, c.I-6, s.116.

41. Indian Association of Alberta Indian Act Study Team, "Proposed Revisions to the Indian Act", 6 August 1974, Section 388.

42. Indian Act RSC 1970, c.I-6, s.114(2) and s.114(1), respectively.

43. Indian Association of Alberta Indian Act Study Team, "Proposed Revisions to the Indian Act", 6 August 1974, Section 389.

44. Indian Act RSC 1970, c.I-6, s.119.

45. Indian Act RSC 1970, c.I-6, s.118, s.121, s.122.

46. Cardinal, 114.

47. Ibid.

48. Leroy Little Bear of University of Lethbridge, interview by author, 13 May 1988, Lethbridge, tape recording; Weaver, Making Canadian Indian Policy, 200; Weaver, "The Joint Cabinet/ National Indian Brotherhood Committee" Canadian Public Administration 25 (Summer 1982): 216.

49. Indian Association of Alberta, "The Negotiating Committee", 14 July 1971: 1.

50. Weaver, Making Canadian Indian Policy, 200-201.

51. Weaver, Making Canadian Indian Policy, 202; Weaver, "The Joint Cabinet/National Indian Brotherhood Committee", 220. Illustrations: the 1973 occupation by Indian youth of DIAND offices in Ottawa; the 1974 occupation of DIAND's Calgary office;; the 1974 Anishinabe Park occupation in Kenora; Native Caravan trek from Vancouver to Ottawa and demonstration on Parliament Hill on September 30, 1974.

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CHAPTER 5

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT:
IMPLEMENTATION OF EDUCATIONAL POLICY, 1973-1978Introduction

During the 1970s, the Department of Indian Affairs and Northern Development comprised four main organizational subunits, or programs, and one small office called the Office of Native Claims. The four programs were: Administration, Parks Canada, Northern Development, and Indian and Inuit Affairs. In this study, the program of primary relevance is the latter program, Indian and Inuit Affairs. Accordingly, unless otherwise specified, usage of "Department of Indian Affairs and Northern Development", "DIAND", or "the Department" is synonymous with Indian and Inuit Affairs Program.

During the timeframe of this study, the Indian and Inuit Affairs program was the largest of the four DIAND programs, as reflected by budgetary divisions and number of program personnel.¹ Ponting and Gibbins summarize the manifest functions of the Indian and Inuit Affairs program to be "the delivery of services to Indians, the execution of certain trustee responsibilities, and the fostering of development and opportunity among Indians."² As well, the authors contend that a latent function of the Indian and Inuit Affairs Program is "social control".³ Underlying this latent function of social control are two main objectives, Departmental self-preservation and "to channel Indian demands and aspirations for new political structures so as to keep them within

the bounds of acceptability to Cabinet, Parliament, and the Canadian electorate."⁴ The methods of educational policy implementation which were effected through the Indian and Inuit Affairs Program during 1973 through 1978 are examined in this chapter in the context of both the Program's manifest functions and in the perceived latent function of social control.

The first section of this chapter provides some background regarding the legislative authority of the Minister of Indian Affairs and Northern Development regarding provision of educational services to Indians. The function of the Department of Indian Affairs and Northern Development is described in that context. The next seven sections of this chapter trace the development of the educational guidelines which were effected in mid-1975 by the Department of Indian Affairs and Northern Development. Consideration is given to the national Indian response to these Departmental policy circulars. The final two sections portray the position of the government on educational policy for Indians at the end of 1978. A general education policy circular released in November of 1978 is utilized to summarize the Department's interpretation of educational policy for Indians at the end of 1978, the terminal point of this study. The final section discusses the role of the Department of Indian Affairs and Northern Development as an effective agent of educational policy implementation.

The development of educational guidelines for implementation of Indian control of Indian education occurred parallel to the

Indian Act revision process. The activities of the Department with regard to the development and release of the 1975 guidelines pervaded the attitudes and working relationships in the Indian Act revision process and in the overall Joint Committee consultative process.

Legislative Authority of the Minister of Indian Affairs and Northern Development Regarding Education for Indians

Acts of Parliament are the backbone of the Canadian federal legislative system. Parliamentary legislation, however, often contains provisions of delegated legislative power. The primary recipients of this delegation are individual Ministers of the Crown. The issuing of Ministerial Orders or the making of regulations are the two most common methods by which Ministers exercise their delegated powers. The term "subordinate legislation" encompasses the system of delegated legislation and "is considered just as much a part of the law of the land as is the Common law or Parliamentary legislation."⁵ Within the Indian Act, three main sources of delegation appear: (1) the Governor in Council; (2) the Minister; and (3) the Chiefs and/or Band Councils. Instruments of subordinate legislation include Orders-in-Council (issued by the Governor in Council which is in effect the Privy Council); directives, regulations and policy statements issued or authorized by the Minister of Indian Affairs; and Band Council Resolutions formulated by individual Indian Bands and authorized by the Minister.

Orders-in-Council regarding Indian education can come into existence by several different avenues. They can be framed by senior civil servants in the Department of Indian Affairs and Northern Development, submitted to the Minister for approval, and endorsed by the Governor in Council (Privy Council). They can be initiated by the Minister himself or herself and submitted to the Governor in Council. Or they can result from the direct authorization to issue Orders-in-Council given to the Minister within the Indian Act itself. Sections 114(1) and 122 give such direct authorization for education matters, and section 69 indirectly impacts on educational services by virtue of its authorization to issue Orders-in-Council regarding Band management of funds.

All Orders-in-Council effected under the Indian Act, however, are subject to control by virtue of Section 69 of the Indian Act which indicates that Orders-in-Council must be made within the context of both the Indian Act itself and within the Financial Administration Act (R.S. 1970, c.116). The Treasury Board and its President, as established under the Financial Administration Act, "control the purse strings", or set the financial limits for program expenditures. All Orders-in-Council must go to the Treasury Board for clearance. Ultimate approval for issuance of an Order-in-Council appears in the form of a Treasury Board Minute. The Treasury Board Minute is subsequently approved by the Governor General in Council.

There were three key Treasury Board Minutes issued in 1971 and 1972 that became instruments for implementation of the 1973 policy of Indian control of Indian education. These Minutes created subordinate legislation in the areas of kindergarten, post-school programs and in-school programs. Policy for the provision for kindergarten programs for Indian children had been initiated in 1958 (T.B. 527861, March 6, 1958). Although the Indian Act does not provide Ministerial authority for children under six years in age directly, the Minister's general authority to provide "for ...education" per Section 115(a) provided the means by which the initial kindergarten program for five-year-olds was established.⁶ Subsequently the kindergarten program was expanded to include three, four and five year olds.

In November, 1971, authority was secured by Treasury Board Minute for the transference of kindergarten program operation to Bands (T.B. 708442; November 25, 1971). The Minister may now "enter into service contracts with School Committees and Band Councils" for the operation of kindergarten programs.⁷ In November, 1973, this Treasury Board Authority was amended to include authority for Band Councils or School Committees to purchase special education services for exceptional children living on Reserves (T.B. 716019; November 1, 1973).

Authority for Band Councils to operate post-school programs was issued in March, 1972 (T.B. 710314; March 22, 1972). This authority came under the same rubric of discretionary Ministerial power as did the kindergarten program: the clause in Section

115(a) of the Indian Act which enables the Minister to "provide ...for education".⁸ By virtue of this Treasury Board Minute, "wherein by means of a band council resolution, education funds could be turned over to the band which would administer the program financially, with the [DIAND] Adult Educator acting in an advisory role only."⁹ Adult education programs which can be administered by Bands on reserves include basic literacy, upgrading, pre-vocational and life skills education courses.

The third Treasury Board Minute which provided a potential avenue of policy implementation in 1973 for Indian control of Indian education referred to the in-school program, or regular educational program for Indian children. It was issued on November 23, 1972 (T.B. 715958; November 23, 1972). This Minute secured authority for Band Councils to engage in the following educational activities:

administration of tuition payments to provincial School Boards, the employment of teachers, the management of educational assistance programmes, the handling of education allowances to students, the provision of seasonal transportation programmes (in addition to the daily transportation programmes, the authority for which they acquired under Treasury Board Minute 678269, April 16, 1968), the operation of student residences, and the responsibility for social counselling services.¹⁰

The transfer of authority to Bands to manage their respective in-school programs, as well as their respective kindergarten or post-school programs, continued to be by virtue of subordinate legislative instruments throughout the timeframe of this study.

In addition to Orders-in-Council, the Minister has the authority under the Indian Act to make regulations in respect of

education of Indians. The following are among those areas where this authority may be exercised: establishment, operation and maintenance of schools; school equipment; teaching staffs; inspection of and discipline in schools; transportation to and from school; maintenance moneys for children in Residential schools; and establishment of separate schools on Reserves.¹¹

While the Minister has the general authority regarding policy, rules and regulations in the provision of educational services to Indians, the Department of Indian Affairs and Northern Development Education Branch also issues directives for day-to-day administration of these services. These administrative devices come in the form of Education Division Letters, statements of operating procedures, policy statements and guidelines. Program Circulars issued by DIAND during 1975 and in 1978 were contentious for both their specific content and for their perceived lack of Indian consultation in development. While most of the Program Circulars regarding education were not ultimately signed by the Minister, their release in 1975 created a significant controversy over the potential for civil servants to undermine federal policy through such devices as Departmental guidelines and regulations.

Chiefs and Band Councils are the third source of legislative delegation of power under the Indian Act. Section 81 of the Indian Act delineates the areas in which Chief and Council may issue regulations. These regulations are subject to Ministerial approval. The Indian Act contains no direct delegation of legislative powers to Chiefs and Band Councils regarding

education. This lack of legislative means by which the Minister could directly transfer authority to Bands for management of their respective education programs was one of the major impetuses behind revision of the Indian Act during 1973 through 1978.

Through the system of delegated legislative authority, the educational provisions of the Indian Act are translated into operational form. Sections 114 through 123 of the Indian Act delineate what educational services can be legally provided by the federal government. Subordinate legislation, such as Treasury Board Minutes, departmental directives and guidelines and policy statements, define how those educational services are to be provided. The potential for interpretation of general subordinate legislation at regional, district or local levels contributes an additional element for how educational services will actually be provided.

Expansion of the Contributions to Bands Program

The three Treasury Board Minutes issued in 1972 and 1973 regarding kindergarten, post-school and in-school programs for Indians provided the means by which Bands could become directly involved in the management of education programs and functions. The transfer of funds to Bands for program management occurred through the Contribution to Bands Program which had been initiated in 1965. In the spring of 1972, the Department set up a task force to review the Contributions to Bands Program. The Task Force on the Contributions to Bands Program subsequently held

twenty-eight meetings with various Indian groups and organizations across the country from December, 1972 to March, 1973. The Department requested that Indian groups, individuals and organizations submit briefs or position papers to the Task Force as it travelled across the country. These submissions, thirteen in total, and the twenty-eight "consultative" meetings provided the basis for a reexamination and subsequent expansion of the Contributions to Bands Program.

The Task Force report was completed in April, 1973. The recommendations in the report centered around three concerns:

the need for core funding for band councils, the need to lay a sound and lasting basis for local government on reserves and, finally, the need for local government guidelines.¹²

Based on the findings of the Task Force, the Minister of DIAND made a submission to the Treasury Board in February, 1974, to expand the Contributions to Bands Program.

The Minister's submission was entitled "Indian Local Government Program". It consisted of two main parts. One part of the proposal sought to establish a Core Fund for basic Band administration, or

to provide the following, based on the Band Council's priority in each of the following categories:

- (1) Honoraria to Chiefs and Councillors.
- (2) Travel in the conduct of Band Council business.
- (3) Professional advice.
- (4) Full or part-time administrative staff.
- (5) Office rent, equipment, stationery and utilities excluding furniture.¹³

The Department viewed the Core Fund as a necessary change in funding procedures in light of the increasing responsibilities

Band Councils were experiencing, including those related to programs which the Band could or would take over.¹⁴ The Core Fund was not intended to cover administrative costs of running programs; those costs were to be negotiated in a particular program's takeover process. The Department construed the Core Fund as a response to the desire being expressed by Indian communities and leaders since the early 1970's for "involvement and decision-making in matters of local concern."¹⁵ The Core Fund was to "help Councils carry on the business of local government..."¹⁶

The second part of the proposal sought to consolidate all existing authorities into one overall authority which would permit the Department to transfer funds for any or all Capital and O & M programs approved in Estimates to Band Council, District Councils and Inuit Settlement Councils.¹⁷

Any spending limits or other conditions specified in any of the Treasury Board authorities to be rescinded, however, were to be retained and attached to the agreements under which the respective program was to operate. The three Treasury Board Minutes regarding the kindergarten, post-school and in-school programs were among those existing Treasury Board authorities to be rescinded and supplanted with the more general authority.

The objective of the consolidation of Treasury Board authorities was to facilitate the transfer of authority to Band Councils to operate the various DIAND programs, including education, by utilizing one umbrella Treasury Board authority. Any program transfer, however, had to be consistent with certain

criteria to "ensure the maintenance of adequate standards of service and the judicious use of public funds."¹⁸ These criteria included:

the effective functioning of local government, the needs of community residents, legislative requirements, and the principles of good management.¹⁹

In addition to these criteria, the type of program to be transferred was relevant. The Minister's proposal delineated three types of programs or functions: (a) programs or functions which could be carried out by Councils under general guidelines; (b) programs or functions which could be carried out by Councils under mutually acceptable terms and conditions; and (c) programs and functions for which the Department had to retain responsibility and administration because of statutory or other considerations.

The latter category of programs or functions dealt primarily with land and resources, treaties and annuities, and estate administration. The other two types of programs or functions included education programs or functions which are delineated in Figure 4.

Band Council Resolutions were required for those programs or functions transferrable under general guidelines. Any transfer of funds for these programs would be "in accordance with any spending levels which Treasury Board may have set for particular programs."²⁰ When such programs were transferred, "powers would be assumed fully by Councils with the departmental role being essentially one of funding and auditing."²¹ Programs listed under

the second group above were viewed as federal responsibilities which could be discharged by entering into contracts with Band Councils.

This is when a Council would, in effect, be acting as an agent of the Government. Contracts would be drawn up incorporating conditions required by both parties.²²

Programs or Functions Which Could Come
Under General Guidelines

Adult Education
Curriculum Enrichment
Education Committees
Educational Studies and Research
Maintenance of Students in Private Homes
Mid-day Lunches
Professional Education (Teachers)
Scholarships
School Inspection Services
School Maintenance and Utilities
Seasonal Transportation
Student Allowances
Vocational Education

Programs or functions which could be carried out
under mutually acceptable terms and conditions

Daily Transportation (schools)
Student Residences
Control of Band Capital Funds
Education in Non-Federal schools
Joint School Capital Construction

Figure 4. Education programs categorized according to conditions for transferability to Band Councils, 1973.

Source: DIAND, "Indian Local Government Program",
22 February 1974.

The Department viewed the new structure for transfer of programs to Band management as described in the "Indian Local Government

Program" as being exemplary of their newly perceived role in Indian affairs.

We now see our role as largely being that of assisting the elected leaders of native communities to meet the local government responsibilities given to them by the electorate. In other words, the Department has slowly begun to shift from its traditional role of ministering to native people to one of responding to their initiatives in what many consider to be one of the most dynamic programs of social change in Canada today. [Emphasis in original]²³

The "Indian Local Government Program" was approved by Treasury Board Minute 725973, dated March 28, 1974, with several conditions attached, including the provision that no extension of Band control of capital funds would take place due to the recently approved "Indian Program 5-Year Capital Plan" (TB Minute 721633, December 27, 1973). This meant that Bands could not have control of capital funds for the building of new schools or education facilities, as originally intended in the Treasury Board submission. This stipulation was changed in 1977, when authority to transfer education capital funds to Band Councils "for the planning, design and construction of education facilities" was secured through Treasury Board (T.B. Minute No. 751608, 8 July 1977). The Core Fund program began operation on July 1, 1974.

Initial Guidelines for Implementation of the New
Educational Policy: October, 1973

In preparation for Treasury Board approval of an expanded Contributions to Bands Program, the Department began formulating guidelines for "local government", including guidelines for management of educational programs. In October of 1973, the

Department circulated a paper entitled "Indian Band Council Involvement in the Management of School Programs." The paper outlined four methods which the Department envisaged for achieving the goal of "local control" through "local involvement in the managing of school programs".²⁴ These four methods of management were that the school be managed by: (a) the Department of Indian and Northern Affairs and a Band Council or Local Indian Education Authority; (b) an Indian Band Council or Local Indian Education Authority; (c) a Provincial School District or Joint School District; and (d) an Indian corporation. The Department paper also remarked that in addition to these methods,

it is also possible for the school program to be managed by a combination of two or more of the above or for a Local Indian Education Authority to develop and submit a proposal for another method of management.

Also it is understood that nothing in the methods outlined is intended to imply that Bands must take over their own school programs or to dictate how they should operate these programs if they are taken over.²⁵

For each of the four methods of education program management, guidelines were then proffered. These guidelines included such aspects as staffing, format of proposals for transfer of authority, sample Band Council Resolutions, time deadlines for requests for transfer of program aspects, procedures for obtaining funding, and procedures for managing the school program as a corporation.

In circulating the Department's guidelines to the Provincial and Territorial Indian Organizations, the National Indian

Brotherhood Education Consultant, Dr. Jacqueline M. Weitz, remarked on the tentative nature of the guidelines.

The guidelines have been prepared by the Department for your discussion and reaction. It will be extremely helpful if you will give them your immediate attention so that we can receive your comments, suggestions for change, criticisms, etc. as soon as possible.²⁶

The Department reissued this October 1973, paper in a modified form as an Appendix to the August 1974, paper prepared by the DIAND Education Branch entitled "Guidelines Related to the Band Control of Education Programs."

"Guidelines Related to the Band Control of
Education Programs": August 1974

Approval of the expanded Contributions to Bands Program by the Treasury Board in February of 1974 necessitated the formulation of guidelines for those programs which could be transferred under "general guidelines" and for structuring the transfer of programs which would take place "under mutually acceptable terms and conditions". In the context of "partnership" between the Department of Indian and Northern Affairs and the Bands in the implementation of educational policy,²⁷ the Education Branch of the Department prepared a discussion draft entitled "Guidelines Related to the Band Control of Education Programs". The document was dated August, 1974. It consisted of a series of guidelines for aspects of the education program, including "General Conditions for the Transfer of Education Programs to Band Council Control" and guidelines related to the following areas:

- (a) staffing of reserve schools and counselling programs;
- (b) curriculum enrichment projects;
- (c) professional development;
- (d) education assistance for elementary and secondary students;
- (e) daily transportation of students;
- (f) lunch supplements;
- (g) Band education studies;
- (h) transfer of educational capital facilities to Bands;
- (i) native language programs;
- (j) school accommodation, grades Kindergarten to Ten; and
- (k) continuing education programs.²⁸

The draft document also included as appendices two papers of note. One of these was a modified version of the October, 1973 circular mentioned previously, the "Indian Band Council Involvement in the Management of School Programs". As Appendix I, it was retitled "Band Councils and School Management" and incorporated as "General Conditions for the Transfer of Education Programs to Band Council Control." Appendix II, also included as part of these same "General Conditions" for the transfer of control, delineated the "mandatory terms and conditions" for the Indian Local Government Program. These terms and conditions covered such areas as required bookkeeping and accounting systems; travel; inventories; budgeting; and the process by which the Band could obtain control of programs, including required meetings, Band Council Resolutions, and responsibilities of the Chief and Council.

The August 1974 draft document prepared by the Education Branch of the Department of Indian Affairs and Northern Development evolved into the April, 1975, policy circulars known as the E-series and D-series guidelines. Before discussion of the events in 1975 surrounding the release of these guidelines,

however, a consideration is given to Indian perceptions in 1973 of methods of education policy implementation and to Indian reactions during 1973 and 1974 regarding the expansion of the Contributions to Bands Program and the government's vision of "local government" and the transfer of education programs to Bands.

National Indian Brotherhood Initiative in Implementation of
Indian Control of Indian Education, 1973

While the Department of Indian Affairs and Northern Development pursued implementation of the new educational policy, Indian control of Indian education, through an expansion of the Contributions to Bands Program and through the formulation of guidelines implicit in that expansion, the National Indian Brotherhood explored an alternative mechanism for educational policy implementation. In July of 1973, the National Indian Brotherhood submitted to DIAND a request for funding of an Indian Education Service.²⁹ The NIB proposal described the Indian Education Service as the mechanism which would fill the need to facilitate and ensure improved educational services to Indians.

The proposed Indian Education Service was to function on three levels, the national, regional and local. The national level office would be comprised of two officers, appointed by and directly responsible to the NIB Executive Council, and a secretary. The regional and local offices would consist of personnel appointed by respective provincial/territorial Indian organizations or by Band Councils. The latter two levels of

"local government" and program transfer . The locus for Indian control of Indian education remained at the individual Band level, but the Department of Indian Affairs and Northern Development rather than the National Indian Brotherhood evolved as the overall coordinating agent for implementing Indian control of Indian education.

Indian Response to the Indian Local Government Program
and Other Department Initiatives: 1973-1974

The three Treasury Board Minutes issued in 1972 and 1973 regarding kindergarten, post-school and in-school programs initially created an atmosphere of optimism among Indians. They were viewed by some as "once and for all" providing "Indian people the legal rights to plan for and control the style of education for their children."⁴⁰

We felt that a new period of history was about to emerge, a time when Indian people were released from the bondage of the past, allowing us to develop a new destiny for ourselves.

In Saskatchewan, for example, Indian Control of Indian Education emerged at James Smith, Sturgeon Lake, Little Pine-Poundmaker, File Hills Bands, Muskey Lake, Red Pheasant and Thunderchild Bands. At the same time, Indian people took control over the operation and management of student residences throughout the province.⁴¹

The initial optimism for the purported "partnership" in educational policy implementation, however, soon waned. The Core Fund program aspect of the Contribution to Bands Program came under criticism for unilateral decisions being made by the Department regarding the discontinuance of Honoraria to Band Councils and regarding the five ways in which Core Funds had to be

used.⁴² Two specific instances during 1974 confirmed the suspicion of Indian leaders that the Department of Indian Affairs and Northern Development did not honor the bilateral or consultative approach to decision-making in educational policy implementation.

A copy of a letter dated August 26, 1974, from the Saskatchewan Regional Director to District Superintendents of Education found its way into the hands of the Executive of the Federation of Saskatchewan Indians. The letter outlined a plan of action to be immediately put into effect "as an initial approach to curtailing expenditures and cutting back the huge projected year-end deficit."⁴³ The plan included the following procedures.

1. The Post-School Program must be limited to only university and technical school students. This means that adult education and E & R [Employment and Relocation] programs must be curtailed for the remainder of the fiscal year.
2. All nonessential programs in the In-School Program such as lunch supplements, unnecessary travel, unwarranted educational assistance, etc. cannot be authorized for the remainder of the 1974-75 fiscal year.
3. A moratorium is to be placed on all additional Band staffing requests. The only additional staff permitted will be essential teaching positions.
4. No new programs or expansion of existing programs are to be approved upon receipt of this directive.
5. Each District Superintendent of Education will keep a firm commitment control of each sub-activity level II and advise Regional Office when funds are approaching depletion. Regional Office will then advise as to what action must be taken regarding the particular program involved.⁴⁴

The Federation of Saskatchewan Indians viewed this directive as a "serious departure from the joint consultative process developed

in the last few years", and as an exemplification of civil servants' undermining "the spirit of intent of the Government of Canada in its policy for providing self-determination of Indian people..."⁴⁵

...you, in the position of Regional Director of the Saskatchewan Region, unilaterally stated policy decisions that fundamentally effect the education rights of Indian children. Your decision to formulate policy in this manner, the Federation considers as being a backward step, an abrogation of past agreements and a process that the Indian leadership of this province will not tolerate.⁴⁶

The Federation responded to each of the five points in the plan, illustrating how the educational rights of Indians were affected and how federal policy was being undermined. The Regional Director's decisions were viewed as based on an "illegal authority", his concern over budget control, which contravened the national-level agreement that implementation of educational policy would be a product of joint consultation and decision-making. The Federation recommended that the August 26 directive be disregarded and "that the Executive [of the Federation of Saskatchewan Indians] and the Department meet to discuss the problem and develop a mechanism for future joint planning."⁴⁷

The second instance wherein Indian leaders became aware of unilateral policy decisions made by the Department which impacted implementation of educational policy was through access to the Summary of Proceedings of the Regional Directors' Conference on November 4 to 6, 1974, in Kingston, Ontario. At that meeting, the Regional Superintendents agreed to the following:

- (a) Terminate the noon-day lunch supplement on June 30, 1975.

- (b) Increase the number of Indian para-professional counsellors and decrease the number of professional education counsellors.
- (c) Where provincial loans and grants are available to Indian students, direct Indians to this source as a first resort.
- (d) Review the daily transportation of students with intention of eliminating abuses.
- (e) Review the adult and vocational education training program.
- (f) Conduct a fifth year evaluation of Cultural/Educational Centres program and determine ways of retaining the good portions of the program while terminating portions that lead to the maintenance of large buildings.
- (g) Complete the development of the guidelines for transfer of education programs to Bands.
- (h) Close seventeen student residences over the next five years....Demolish buildings where practical alternate uses cannot be found.⁴⁸

The summary minutes of the Regional Directors' meeting also included several references to the fact that curtailment in various education program aspects was being undertaken to "try to balance the budget".⁴⁹

The exposure of these policy decisions being made among Regional Directors without consultation with Indian people was perceived by some Indians as a violation of a stated federal policy of consultation and cooperation with Indian people. Comments such as "The process of Indian people making planning and policy decisions is but empty rhetoric"; "The Department is determining program needs for Indian people on terms of Departmental efficiency and not on the real needs and priorities of the Indian people"; "The purpose to reduce guidance counsellors and employ social counsellors and other para-professionals is an attempt to have Indian people serve the function of professionals but at a price of a cheap labour force"; and "The [stated] policy

is that residences are not to be phased out without consultation-- a blatant lie!"⁵⁰ reflect the anger and frustration among Indians over continued unilateral decision-making by the Department in spite of the purported federal policy of Indian consultation in educational policy implementation. This perception among Indians that federal policy and Departmental interpretation of that policy were not necessarily consonant was intensified in 1975, with the release of the D-series and E-series guidelines.

1975 Guidelines for Educational Policy Implementation

Introduction

The August, 1974, discussion draft document prepared by the Education Branch of the Department of Indian Affairs and Northern Development entitled "Guidelines Related to the Band Control of Education Programs" evolved into the program circulars released in the early spring of 1975 regarding Indian local government and Indian education. These 1975 program circulars were cited as the D-series guidelines, relating to local government, and the E-series guidelines, relating to education policy. The D-series and E-series guidelines were comprised of five and twelve circulars, respectively. The release of these circulars prompted an almost immediate outcry among Indians over the Department's apparently unilateral policy decisions regarding the structuring of Indian local government and the implementing of educational policy. This widespread remonstration of the circulars led to a debate in the House of Commons on June 12, 1975, regarding the

nature of the government's professed "consultative policy implementation" process with the Indians within Canada.

Rationale for the Departmental Issuance of Guidelines

In March of 1975, in an appearance before the House of Commons Standing Committee on Indian Affairs and Northern Development, the Minister of Indian Affairs explained the reasons for the guidelines.

... there has been some doubt about the terms and conditions under which bands can operate programs and the budgetary limits that must apply. This is an area where the responsibilities of the Minister cannot be taken lightly, and the Department has been instructed to prepare clear guidelines for the transfer of education and other programs. This work is underway at the present time.⁵¹

The Assistant Deputy Minister, in an appearance before the same Committee on May 8, 1975, expounded on the necessity for guidelines.

It has been unfortunate, Mr. Chairman, that as the responsibilities and the fiscal considerations of the department have grown, and as bands have assumed increased responsibility, that there has been a vacuum develop as to the respective responsibilities, authority and accountability of both chief and council and departmental officials.

As you recognize by the estimates which are before you tonight, we are looking at a budget in excess of \$400 million. As a responsible officer, I cannot condone the continuation of this kind of vacuum which does not set some benchmark guideline, or parameters within which both parties can recognize their respective responsibilities and authority.⁵²

The government argued the necessity of the guidelines by citing the large amount of public funds being expended in Indian Affairs and, in particular, the increasing amount of that expenditure coming under control of Bands.⁵³ Mr. Dionne expanded on this

accountability argument during the Commons debate of June 12, 1975.

The guidelines have been developed to support seven basic principles: first, that the Indian community itself--those who elect the chief and council, be informed and support the concept of band administration of programs and especially such vital community programs as economic development and education; second, that band administration will require qualified staff to provide a proper level of service to the community; third, that public funds provided to bands must be used for the purpose for which they are intended and must be properly accounted for just as are other public funds; fourth, that individual rights be protected--band members have a right to be fully informed of the total sums received by the band and of how these funds have been spent; fifth, inventories and records of band assets are to be kept to ensure that those things purchased on behalf of all do not become the private possessions of the few; sixth, that band methods of purchasing supplies and services should conform to sound business and administrative practices; seventh, that both the bands' and the department's responsibilities should be as clearly defined as possible.⁵⁴

The argument for accountability in expenditure of public funds, however, was not the focus of Indian contention.

Issues Regarding the 1975 Departmental Guidelines

The primary issues as perceived by Indian leaders and organizations and as expressed by the Opposition in the Commons debate of June 12 were the manner in which the guidelines were effected; the impact the guidelines had on Band autonomy; and the effect which the issuance of Departmental policy circulars had on the concurrent joint consultative and negotiation processes of Indian Act revision and Indian rights and claims.

The D-series and E-series guidelines were distributed to Bands during February through May of 1975.⁵⁵ However, the D-series program circulars were effective as of April 1, 1975, and

many of the E-series circulars had an effective date of January 1, 1975. The Department maintained that the circulars which had been proclaimed were in effect but still considered to be of an interim nature.⁵⁶ Furthermore, it was stated that the circulars which were not yet proclaimed were very much open for representations.⁵⁷ Yet, an apparent contradiction in the "interim" nature of one key circular was pointed out by the Opposition in the June 12, 1975, House of Commons debate. Mr. J. R. Holmes read the following excerpt from a February 17, 1974 letter from the Assistant Deputy Minister of DIAND to the Regional Director of Alberta:

Attached is an updated version of the general terms and conditions sent to you in September, 1974. You will note that they have been put into program circular format and are now designated "Program Circular D-1" with the title "General Terms and Conditions--Local Government Program". These general terms and conditions encompass all programs and are the cornerstone of Indian local government policy and contain the non-negotiable conditions as seen from the federal government's point of view. While suggestions for amendments or improvements are solicited, these terms and conditions remain mandatory.⁵⁸

The "cornerstone" of Indian local government, the non-negotiable, mandatory D-1 circular, was viewed by the National Indian Brotherhood to be a product of unilateral Departmental policy formulation.

The Department contended throughout the debate on the guidelines that the D-series and E-series guidelines had been based on extensive consultations with "the Indian people, or the National Indian Brotherhood".⁵⁹ When forced to substantiate this claim during the Commons debate of June 12, government

representatives referred to the 1972-73 meetings of the Task Force on the Contributions to Bands Program and "all-chiefs meetings" which the Minister had attended.⁶⁰ Earlier in May the Minister had also cited "two national conferences for the Indians which were sponsored by the Department of Indian Affairs" as forums for consultation on the guidelines.⁶¹

The National Indian Brotherhood issued a formal statement on June 25, 1975, regarding the issue of "consultation" on the guidelines.

This office states categorically that there has not been any extensive or official consultation on the matter of local government guidelines with the National Indian Brotherhood and the member Indian Bands.

There has been discussion and meetings on the matter of the Education guidelines with our Education Officers and Department officials in which agreement was reached that no new guidelines would be implemented but a series of circulars would be formulated to assist the Department of Indian Affairs staff in program development and fiscal management.

This agreement has evidently been repudiated by the Minister and his senior officials.

This leads us to conclude the Minister is talking out of the both sides of his tongue.

He says there was consultation where, in fact, there was none; and where there was consultation, he reneges on the agreement reached with the National Indian Brotherhood.⁶²

The nature of the consultation on the local government guidelines was metaphorically described in the House of Commons debate of June 12, 1975, by Mr. Wally Firth, Northwest Territories.

If one reads the recommendations of this committee [Task Force on Contributions to Bands Program], one can see the seeds that eventually grew into the program policy guidelines circular. Indeed, Mr. Speaker, it would seem that some Indian people had a small part to play in planting those seeds.

However, the plant, the circular, grew under the loving care of the bureaucrats of the department. It grew from the seeds in 1973 until February, 1975, when it came out of the department's hothouse. The problem is that when this plant came out, the Indian people saw it for the first time in two years. At that time they could not recognize it. There had been no Indian hands pruning, fertilizing or going around spraying the plant to eliminate the weeds, and so on.

Is there any wonder the Indian people across the country reject this plant, these circulars?⁶³

The issue of the nature of consultation on the local government and education guidelines never resolved itself. It had, however, provided the rationale for the June 12 debate in the House of Commons, wherein consideration was given to the request that a moratorium be placed on the guidelines "until such time as full consultation" with Indians took place. The other issues surrounding the guidelines centered on the actual content of the guidelines.

The D-series Guidelines

There were five Program Circulars approved as guidelines for local government, entitled:

- D.1 General Terms and Conditions of the Local Government Program
- D.2 Policy Guidelines Related to District Councils
- D.3 Policy Guidelines Related to Core Funding
- D.4 Policy Guidelines Related to Program Funding
- D.5 Policy Guidelines Related to Band Managed Program Administrative Costs

The D-1 circular, cited by the Department as the "cornerstone to local government", applied when any Band sought to "take over" the administration of any Reserve program, including the education

program. For this reason, some detail is provided regarding its contents.

The first section of the D-1 circular outlined the procedures to be followed by a Band in order to initiate the program "takeover" process. These procedures included the convening of a meeting of Band members "at which the basic concepts of local government and its operations, and the particular program to be assumed are discussed, and the concurrence of the majority of those present at the meeting obtained".⁶⁴ The Regional Director was to be informed of the meeting and the details and results thereof. A quorum of the Band Council had to pass a resolution whereby it was agreed

to enter into an agreement with the Department, on the understanding that, should the Regional Director deem it necessary for the orderly transition of program management from the Department to the Band, or for effectiveness of program delivery, a mutually agreed period of joint Departmental/Band management will be a condition of the agreement.⁶⁵

The conditions of the Band Council Resolution were binding "on the Band, its Council, any subsequent Council, and on the members of the Band staff but could not supercede "any applicable regulations of the Government of Canada or of the Province".⁶⁶ In the event that a Council failed to follow or correct any omission in respect of the conditions of the Resolution or failed to follow any regulation or statute applicable to a particular community program, the Regional Director could require the program to be jointly administered "for the length of time he believes necessary to correct the situation" or he could "withhold or withdraw the

privilege of administering the community program, programs, or parts thereof by the Council for a length of time deemed necessary."⁶⁷

Criticisms of the content of the Procedure section of Circular D-1 included the observation that these latter "powers" of the Regional Director could be construed as establishing "the right of the Department to unilaterally withdraw from the agreement".⁶⁸ The primary objection to the D-1 Circular centered around its provision for creating an entirely new Reserve entity, a "local government authority". This entity was defined as follows:

any body which administers one or more programs financed in part or in whole by the Department or other government agency or department, including in addition to Indian Band or Inuit Settlement Councils; District Councils as defined in Program Circular D-2; and groups such as Education Authorities, Housing Authorities, etc.⁶⁹

Accordingly, for purposes of the Circular, the definition of "Chief" was expanded to include "the chairman of a local government authority" and the definition of "Council" was expanded to include "the governing body of a local government authority".⁷⁰ The creation of this new Reserve entity was viewed by critics as a potential means to undermine the authority of Chief and Council as provided for in the Indian Act.⁷¹

For example, if a group of Indian people desired a program to be established on the Reserve, and if the Band Council opposed the program, the opposition group could form a Local Government Authority with the chairman having powers equal to the Chief, and the Executive body of the Authority having powers equal to the Council and the Local Government Authority could then sign an agreement with the Department of Indian Affairs for program dollars.⁷²

Transfer of powers allocated to the Chief and Council as defined in the Indian Act to the "chief" and "council" of a Local Government Authority was viewed as a unilateral change of the Indian Act itself. Such a unilateral policy decision by the Department contravened the joint consultative process on Indian Act revision which was concurrently in place for effecting any changes to the Indian Act.

The second section of the D-1 Circular outlined the responsibilities of Chief and Council with respect to a program takeover. These responsibilities included "planning, estimating and negotiating for the total needs of the community including proper budgeting processes"; ensuring sound financial management; ensuring properly trained and qualified staff for programs taken over; overseeing the conduct of all Band employees; and conducting investigations in situations of suspected maladministration.⁷³ The Band Council also had the responsibility, by Band Resolution, to appoint a person to serve in a bookkeeping capacity.

Other sections in the D-1 Circular were entitled as follows: Accounting, Receipt of Funds, Purchasing, Payment Approval, Disbursements, Contracts and Tenders, Travel, Inventories, Budgets, Audit. These sections detailed the acceptable processes and procedures within each of these categories.

The operating procedures described in Circular D-1 applied to all programs taken over by a Band. The National Indian Brotherhood viewed the "preoccupation with detail and with the minutiae of administration and bookkeeping" in Circular D-1 as

more properly belonging "in a manual or information book, where not one, but several acceptable ways of accounting, purchasing, handling contracts and tenders, etc., would be described."⁷⁴ The NIB saw the opportunity for growth and development of Band members in obtaining administrative skills through active participation in structuring program management trivialized by the rigid and paternalistic imposition of operating procedures designed "by public servants in remote offices."⁷⁵ Imposition of the operating procedures contained in D-1 were viewed as an inhibition of local initiative and a confirmation that the local government guidelines were "not meant for local control, but for Indians to run department programs."⁷⁶

Circular D-2 established guidelines with respect to District Councils, or aggregates of Bands. The definition of "District Council" in D-2 was:

"District Council" means and includes any grouping or aggregation of Bands (sometimes referred to as Area Councils or Tribal Councils) who have agreed to combine efforts and resources primarily to facilitate the administration or delivery of one or more local programs, or services or parts thereof to member Bands for which financing is provided by the Department; but does not include such groupings whose primary purpose is advisory or consultative in nature.⁷⁷

The D-2 Circular delineated the following: procedures for formation of such District Councils; the structure of the Councils in terms of Band representation; conditions for and amounts of Departmental funding of core administrative and program costs; required contributory amounts from individual Bands toward District Council functioning; and aspects of financial and program

monitoring. The implications of this circular for education include the prospects for establishing District Education Authorities for pooling of resources, facilities, programs and staff or for establishing District Councils wherein education was one of several programs under their auspices.

General criticisms by the National Indian Brotherhood regarding the D-2 Circular included objection to the mandatory incorporation of District Councils, including those District Councils established before D-2 came into effect; the potential for creating a new bureaucratic structure, Department-District Council, which could serve to undermine individual Band Council authority; and the imposition of operational guidelines which "could be covered in the District Council's own constitution and by-laws drawn up by its members".⁷⁸ Once again the guidelines could be interpreted as a mechanism for inhibition of local initiative and opportunities for growth and development in administrative capacities among Band members.

The creation of an entity which would have legal authority, through incorporation, to sign contracts could be construed as a circumvention of the issue of the lack of this capacity for Band Councils. The issue of structuring legal means whereby the Minister could enter into agreements with Band Councils for education of Indians, i.e. through amendment to Section 114(1) of the Indian Act, was considered a matter of negotiation in the joint consultative Indian Act revision process at the national

level, not a matter for unilateral policy decisions at the Departmental level.

Program Circular D-3 outlined the policy relevant to Band Core Funding. It constituted an updated version of the Band Core Fund Program which had become effective July 1, 1974, as part of the expanded Contributions to Bands Program. Modifications to the Core Fund Program included percentages of Core Fund which had to be applied to two of the five ways in which Core Fund allocations could be used. Ten percent of Core funds had to be applied to operation and maintenance of a council office and twenty percent of the Band's Core Fund had to be charged to salaries for full or part-time Council staff.⁷⁹ The Core Fund Program was also updated to include reference to District Councils.⁸⁰ Member Band Councils were required to use part of their own core funds to support the District Council.

Program Circular D-4, Policy Guidelines Related to Program Funding, set out the conditions and terms relevant to Departmental funding of programs managed by Bands, District Councils, or Local Government Authorities. This circular modified the original "Indian Local Government Program" submitted by the Minister to the Treasury Board in February of 1973. It will be recalled that the Minister's Treasury Board submission classified programs as "transferrable under general guidelines", "transferrable under negotiated 'contracts' or memorandums of agreement", and "non-transferrable". Program Circular D-4 organized programs under these same three categories and added a fourth category,

"transferrable with the concurrence of a third party". The programs relevant to educational activity under each classification are contained in Figure 5. A single asterisk before an activity means that it changed classification from the 1973 document, from "transferrable under general guidelines" to "transferrable under agreement". A double asterisk indicates change from "transferrable under agreement" in the 1973 document to either "transferrable with the concurrence of a third party" or "non-transferrable".

The implications for changing classification of education activities are several. Those programs that changed from "transferrable under general guidelines" to "transferrable under agreement" created the potential for increased government input into standards, procedures and evaluation of such activities when under Band control. The addition of the third category cited above is a recognition of provincial authority over Indians attending non-federal schools. This policy decision, made unilaterally by the Department, contravened the position being advocated by the National Indian Brotherhood in the Indian Act revision consultative process and was a policy matter which was supposedly still under negotiation at the national level. The inclusion of Federal-Provincial Agreements in the non-transferrable program category solidified the government's position on tuition and joint school agreements previously made between the federal government and the various provinces or school

boards. No option existed for renegotiation by Bands with regards to existing federal-provincial education agreements.

Transferrable Programs

Adult Education
Education Committees
Library Contributions
Scholarships

Transferrable Programs on a Contractual or Agreement Basis

- * Curriculum Enrichment
- Daily Transportation
- * Educational Studies and Research
- * Maintenance of Students in Private Homes
- * Professional Education (Teacher training)
- * Federal School Inspection
- * School Maintenance and Utilities
- * Seasonal Transportation
- * Student Allowances (elementary and secondary)
- Student Residences
- * Vocational Education

Programs not transferrable without concurrence of a particular third party

- ** Education in Non-federal Schools

Non-transferrable Programs

- ** Capital Construction--Joint and Federal Schools
- Federal-Provincial Agreements

Figure 5. Education programs categorized according to conditions for transferability to Band Councils, 1975.

Source: DIAND, Program Circular D-4, 27 March 1975.

Programs in both categories of "transferrable" and "transferrable under agreement" were subject to the "general terms and conditions of local government" stipulated in Circular D-1. Circular D-4 also provided an "evaluation system" for the Regional Director to assess the capacity of a Band to take over a program. The rating system consisted of categories as follows:

- Category A: Performance good, additional programs may be transferred.
- Category B: Performance fair, maintain current level of transfer or transfer additional programs under joint Departmental/Band management.
- Category C: Performance poor, in specific areas, withdraw specific programs.
- Category D: Performance poor, in all areas, withdraw all programs.⁸¹

The Regional Director would apply the rating system in four areas: financial audit reports, program evaluation reports, qualification of staff, and "willingness to agree to the General Terms and Conditions of the Local Government Program", Circular D-1. The Regional Director had the authority to apply this evaluation system to new requests for program transfers and to Bands where programs had been previously transferred. The option for withdrawing programs previously transferred to Bands was provided to the Regional Director. In light of the fourth area cited above, willingness to comply with Circular D-1, this option could be construed as a coercive technique to insure compliance with the Department's D-series guidelines.

The final policy guideline in the D-series, Program Circular D-5, set out the conditions and terms "relevant to Departmental

funding of the administrative costs of programs managed by Indian Bands or District Councils or other local government authorities on behalf of the Department."⁸² Program administrative costs consisted of two categories, management and support. D-5 included: methods for calculation of administrative costs, program administrative cost limits, and aspects of financial and program monitoring. Where a Band requested transfer of its education program, Circular D-5 applied to the administrative costs which had to be considered in the request for that particular program transfer.

Program Circulars D-1 through D-5 provided the parameters and conditions under which program management and administrative functions could be transferred to Bands. They served as the instruments whereby the Department's and individual Band's respective responsibilities and authorities were unambiguously delineated. In the purview of the Department, the D-series guidelines served as a response to requests by individual Bands "who said they wanted to know what the rules were under which they have to deal with the program funding coming from the Department."⁸³ The Department considered these guidelines as necessary to ensure accountability in the expenditure of public funds and as insurance for effective program operation.

E-series Guidelines

The Department of Indian Affairs and Northern Development released twelve policy circulars in 1975 regarding education of Indians. Policy circulars were proposed for an additional seventeen education areas. These proposed and released policy circulars are presented Figure 6.

Each of the program circulars, E-1 through E-12, are hereunder described. Points of contention raised by the National Indian Brotherhood for any particular circular E-1 through E-11 are provided. For several of the program circulars, a comparison is made between the 1975 version and earlier drafts from 1973 and 1974. Program Circular E-12, regarding post-secondary education for Indians, has drawn extensive criticism among Indians since its inception; accordingly, more space is devoted to describing the development of the E-12 program circular from 1975 through 1978.

Program Circular E-1 defined "policy guidelines" as follows:

Policy guidelines are instructions to Departmental staff. They explain policies, establish program standards, describe general implementation procedures and funding limits. Policy guidelines are intended to assist officials in planning, program development, and the management of the Department's activities and operations. They are also available to Indian Band members as a source of information on the policies and procedures of the Department.⁸⁴

The National Indian Brotherhood viewed "policy guidelines", if implemented according to the above clause, as having the potential to "create the proper climate for local control by Indian communities."⁸⁵ However, Program Circular E-1 expanded the concept of "policy guidelines" by noting that since "local

Education Program Policy Circulars Released in 1975

- E.1 Education Policy Guidelines -- Their Meaning and Purpose
- E.2 Staffing of Teachers and Teacher Aides in Federal Schools
- E.3 Conditions and Procedures for Transferring Education Programs to Band Council Control
- E.4 The Department's Interpretation of Local Control of Education
- E.5 Native Language Programs
- E.6 Department Education Staff and Band Council Control
- E.7 Cultural Enrichment of the School Curriculum
- E.8 Educational Support Services Provided to Pupils
- E.9 Daily Transportation of Students
- E.10 Education Studies Program
- E.11 Educational Assistance
- E.12 Policy and Administrative Guidelines for the University and Professional Training Program for Registered Indians and Inuit (January 30, 1975) or The University and Professional Education Assistance Program--Policy and Administrative Guidelines (July 1975)

Proposed Program Circulars

- E.13 Joint Schools
- E.14 School Facilities
- E.15 Provincial Schools
- E.16 Student Residences
- E.17 Cultural Education Centres
- E.18 Native Teacher Education
- E.19 Yukon and Northwest Territory Policy
- E.20 Employment and Relocation
- E.21 Text Book Policy
- E.22 Classroom Consultants
- E.23 Student Allowances -- Taxation
- E.24 Editorial Policy for Indian Education
- E.25 Noon Lunch Program
- E.26 Continuing Education Policies
- E.27 District Councils
- E.28 Cultural Development
- E.29 Cultural Grants

Figure 6. DIAND Education Program Circulars, 1975

circumstances may require some departure from the exact wording of a particular guideline", a "degree of freedom" would be allowed with respect to the activities covered by the education program circulars, provided the change did not "result in additional costs to the Department."⁸⁶ Furthermore, when a Band operated any education program, it had to "establish guidelines which must be acceptable to the Department" and "not cost the Department more than would be allotted to a similar program operated by the Department."⁸⁷ These qualifying clauses in Program Circular E-1 were viewed by the National Indian Brotherhood to "immediately limit local initiative and negate the positive effect of the opening [definitional] statement" of educational policy guidelines.⁸⁸

The National Indian Brotherhood viewed Program Circulars E-3 and E-4 as limiting local Band initiative and independence.⁸⁹ Program Circular E-3 established a procedural framework for transferring education programs to Band Council control. Education programs were categorized as cited in Program Circular D-4: "transferrable", "transferrable on a contractual or agreement basis", "not transferrable without concurrence of a particular third party", and "non-transferrable". The program category "transferrable", which included scholarships, education committees, cultural grants, adult education, and library contributions, was cited by the National Indian Brotherhood as contestable "as to its legality according to the Indian Act (Section 114.)" since it purportedly transferred the

responsibility for these programs directly to Bands.⁹⁰ The National Indian Brotherhood advocated transfer of authority over education programs to Bands but not transfer of the responsibility for those programs. Transfer of responsibility for particular programs from the Minister to Bands implied that those programs "had no protection in law, nor any assurance of continued funding."⁹¹ The NIB maintained that the financial responsibility for provision of education to Indians belonged solely with the Minister of Indian Affairs; the legislative recognition of the extent of that responsibility in terms of kinds of educational activities was supposed to remain a matter of negotiation at the Joint Committee level through the Indian Act revision process.

Circular E-3 also delineated the procedures for education program transfer. These procedures included holding a general meeting "to uphold the principle of parental responsibility in education and to ensure that there had been opportunity for band members to become informed about significant changes and proposals in education";⁹² the required lead time for transfer of particular education program aspects; and statements to be included in transfer agreements, such as responsibilities of the Band and of the Department, provision for renewal and termination of the agreement, type of administration, qualifications of required staff, and acceptance by the Band of Program Circular D-1.

Program Circular E-4 replaced the 1974 policy paper "Band Councils and School Management" which had evolved from the October 1973 paper entitled "Indian Band Council Involvement in the

Management of School Programs." All three versions of guidelines regarding Indian management of school programs cite four methods of management. The methods of management which were cited in each document evolved according to the following chart.

<u>October 1973</u>	<u>January 1974</u>	<u>January 1975</u>
1. DIAND and Band Council or Local Indian Education Authority	DIAND in consultation with Band Council or Council-appointed local Indian Education Authority	DIAND in consultation with Band Council
2. Band Council or Local Indian Education Authority	Band Council	Band Council
3. Provincial School District or Joint School District	Provincial School District or Joint School District	Provincial School District
4. Indian Corporation	Corporation	A group of Bands Incorporated as a District Education Council

Figure 7. Evolution of DIAND Program Circular E-4.

Method four, incorporation, did not significantly vary from 1973 to 1975, although in the 1975 version it was appropriate to label the entity as a District Education Council, since the D-2 guidelines had by then been prepared by the Department. Bands wishing to establish a corporation for purposes of jointly operating a school or school district were to individually submit a Band Council Resolution to that effect. They were to appoint a Board of Directors for the corporation. The Board of Directors was to obtain a certificate of incorporation, prepare a program

proposal, and establish the procedure for receiving and administering funds. The mandatory requirement of incorporation for two or more Bands to jointly manage schools was rejected by many Bands.⁹³ Federal or provincial incorporation of any Band activity had implications for taxation purposes as well as for Band autonomy or sovereignty.

Method three, management by a provincial school district, became less specific between 1973 and 1975. In the 1975 version, a Band Council could have funds transferred to them for negotiation purposes or they could have the Department make payments directly to the School District based on the agreement reached. In either case, the agreement was to be approved by the Band Council, School District, and the Department of Indian Affairs and Northern Development. The following two subpoints were referenced in both the 1973 and the 1974 draft guidelines but were eliminated in the 1975 guidelines: in situations of joint school management, a Band Council could require

(b) that the school principal and superintendent meet regularly on the reserve with the Band Council to report on the education service;

(c) that representatives of the Band be included as members of the school board, if this is legally possible.⁹⁴

Eliminated as well in the 1975 guidelines was the following point:

2. If a Band Council and a community of non-status people wish to establish a provincial joint school district, funds can be received from the Department to finance the Band share of the education costs.⁹⁵

The 1973 draft version actually gave negotiating power to the jointly formed school district to procure the Band portion of

funds from the Department. Presumably, in eliminating this clause the Department sought to preclude the establishment of new joint school districts, especially when it implied in the clause that Department funds would be available if requested for such a joint endeavor, cf. "funds can be received from the Department".

In the 1975 E-4 guidelines, the second method of school management, by Band Council, was cross-referenced to Program Circular E-3. In the previous draft versions of the guidelines, the subject matter of E-3 was included as part of this management-type description. In both the 1973 and 1974 draft guidelines, reference was made to a situation where, if a Band Council and a community of non-status people wished to operate an accredited private or independent school, the "Band would obtain funds for its share of the cost of the school from the Department".⁹⁶ Reference to this situation was dropped in the 1975 guidelines, as was any reference to matters of capital expenditure, i.e., construction of new schools or additions to present facilities. The National Indian Brotherhood objected to the exclusion of Band control of capital programs and called for steps to be taken to change this policy.⁹⁷ Objection was also made by the National Indian Brotherhood regarding the mandatory condition that Band Councils managing their respective education programs comply with the budgetary and accounting procedures delineated in Program Circular D-1.

Here again, there is strong emphasis on the close identity which should exist between Band and Department programs, which can only stifle Band independence.⁹⁸

With respect to Band Council management of school programs, the tightening of program management procedures, the exclusion of Band control of capital expenditures, and the elimination of opportunities for Bands to form joint private or independent schools are evidenced through a comparison of the 1973 and 1974 draft guidelines with the finalized 1975 E-4 guidelines.

The final method of school management cited in the E-4 guideline was by Department of Indian Affairs and Northern Development. The 1974 draft version cited this method of management to be school management by DIAND and a Band Council or local Education Authority, giving an impression of joint management. In the 1974 and 1975 versions, the method of management was clarified to be DIAND management, but in consultation with a Band Council. The 1973 draft guidelines also included aspects of Band participation in management of Departmental staff; this program aspect became a separate program circular, E-6, in the 1975 E-series guidelines. Where schools were managed by the Department, a Band Council could require the following:

- a) that they participate in staff appointments, promotions and transfers
- b) that the school principal and Departmental Superintendent of Education meet regularly with them to report on the school program and to consult with them on policies, planning and budgets.⁹⁹

The 1974 draft guideline did not include Band consultation in "planning and budgets". The 1975 E-4, then, expanded the areas

for Departmental consultation with Band Councils in situations of Departmental management of school programs.

Program Circular E-4 described four possible methods of management of Indian education programs. The methods were described as "four established methods which can be used by Band Councils".¹⁰⁰ In the 1973 draft guidelines, methods of management included the same four methods, but a notation was also made regarding alternative methods.

It is important to emphasize that in addition to these four methods, it is also possible for the school programs to be managed by a combination of two or more of the above or for a Local Indian Education Authority to develop and submit a proposal for another method of management.¹⁰¹

The 1974 draft discussion document also made a similar reference: "A Band Council may also wish to submit a proposal for other methods of management."¹⁰² It appears that the 1975 E-4 guideline eliminated options of management of Indian school programs beyond the four specifically cited in the document.

The concept of "local control of education" was specifically defined in Program Circular E-4 as "the participation of a Band Council in the management of educational services provided to all Band members -- children, young people and adults."¹⁰³ The concept of Indian local control was expanded as follows:

2.2 Band Council participation can include various options for control which may range from an advisory function to being responsible for all or part of the planning, budgeting and administration of education programs.

2.3 Band Council control of education programs means that the responsibility to provide education services to the members of a particular Band has been delegated by the Minister to the Band Council of that Band. In assuming the delegated

authority the Band Council is responsible both to its members for providing the required services and to the Minister for meeting the terms of the authority delegated.

2.4 A Band Council may take over and control one or more education program areas excluding capital programs. Band programs are subject to the same budgetary restraints and accounting procedures as Department programs....

2.5 Band Councils may participate in capital planning, but the Department does not have the authority to transfer control of capital programs to Bands.¹⁰⁴

The Department envisioned "local control" of education as Band participation in management of education programs; "management" meant the planning, budgeting and administration of education programs to varying degrees. Any Band participation in management was by virtue of Ministerial delegated authority. Any Band-managed program was subject to government-defined accounting procedures and to Treasury-Board approved expenditures. Band-managed programs were accountable to both Band members and to the Minister.

In the 1973 draft guidelines, "local control" was also equated with "local involvement in the managing of school programs". However, the notation was made that the proffered guidelines were not intended to "dictate how they [Bands] should operate these programs if they are taken over."¹⁰⁵ The 1974 draft discussion guidelines cited "Indian control of Indian education" to be "much more than a collection of guidelines and agreements."¹⁰⁶

The lack of structure in the process of achieving local control is highly desirable. It is essential to the spirit of local control to retain a high degree of flexibility rather than to adopt a pattern or blueprint for developing it....it

is recommended that the approach and method of having a Band assume local control should as much as possible, evolve creatively through frequent discussions, in which a Band has the opportunity to identify its educational objectives and the ways to achieve them.¹⁰⁷

In the 1974 draft document, this call for lack of structure in effecting "local control" of education was preceded by the following statement:

In emphasizing that local control is subject to a band's management capability [as assessed by the Department] and that there will be Departmental financial and program monitoring, bands may be given a clearer picture of the parameters in which they can operate.

In addition to these mandatory financial and administrative conditions, specific guidelines have been prepared for different areas within the education activity.¹⁰⁸

"Local control" of education by Indians, as determined by an examination of the 1973 through 1975 education guidelines, was perceived by the Department to be a process whereby Band Councils managed, to varying degrees and within financial and administrative parameters predetermined by the Department and by the Treasury Board, their respective education program or programs, providing those Band Councils were initially and continually judged by the Department to be "capable" of management functions. Methods of management in 1973 were perceived by the Department to be open for consideration; however, by 1975, only four management structures were permissible.

Program Circular E-2 set out the authorized number of teachers and teacher-aides for federal schools. Native language and culture instructors were excluded in determining ratios. The Departmentally-determined ratios remained constant through the

1973 to 1975 circular modifications. The basic pupil/teacher ratios were to be as follows: for kindergarten (four and five-year olds who follow a half-day program), 15 to 1 for a half-time position; for elementary grades, 23 to 1; and for all other grades, 17 to 1. Employment of teacher-aides was to be "governed by particular needs of young pupils."¹⁰⁹ The role of the teacher-aide was "to assist the teacher with cross-cultural problems, to translate and to clarify concepts and relate ideas to Indian culture."¹¹⁰ The 1974 draft guidelines anticipated that teacher-aides might be required in grades K to 3. But the document also stated that in situations where pupils were "entering a provincial school for the first time at any grade level", there might also be a "need for teacher-aides to help bridge the language-culture gap."¹¹¹ As well, there might also be a need at high school levels for teacher-aides "with specific duties in the area of assistance with studies."¹¹² Another draft version of E-2, probably released in January of 1975, also made reference to the need for teacher-aides "sometimes in higher grades where students have cultural and language difficulties."¹¹³ The 1975 approved program circular, however, eliminated all reference to the need for teacher-aides beyond grade K to 3. Accordingly, an opportunity for cultural or lingual assistance through provision of teacher-aides for Indian students beyond the grade three level was lost.

The matter of quality control was touched upon in Program Circular E-2. Statistical reports from individual schools were to

be the basic documents used in quality control.¹¹⁴ An earlier draft of E-2 also included the Manpower Inventory as a basic document for quality control. Both of these quality control factors were anticipated by the National Indian Brotherhood to be unable to "measure even the minimum requirements expected by Indian parents for teachers of Indian children."¹¹⁵ The overall objection to Program Circular E-2 by the National Indian Brotherhood was that although it appeared that the circular was directed to the operation of federal schools managed by the Department, it could be interpreted by Regional staff to apply to Band controlled schools as well.

This has, in fact, been the case in the past, resulting in frustration for the local Education Authority, as well as restriction on local control of the school program.¹¹⁶

As with previously cited program circulars, Program Circular E-2 was viewed by the National Indian Brotherhood as potentially stifling individual Band initiative in shaping education programs.

If Bands taking over their respective education programs wished to avail themselves of the services of Department education employees, Program Circular E-6 provided the guidelines to do so. Departmental employees could be granted a Leave Without Pay for purposes of working for a Band Council. In an earlier version of E-6, the option for Departmental staff to either take a Leave Without Pay or "to retain their position and work for band operated schools" was provided.¹¹⁷ The latter option was dropped in the final E-6 version. In the 1973 and 1974 draft guidelines, Band Councils or Band Education Authorities were provided some

degree of participation in selection of particular Departmental employees and in evaluation of the performance of those Departmental employees selected to teach in the Band-managed school. Reference to this type of participation was not provided in the 1975 program circular. The National Indian Brotherhood criticized the E-6 circular as being "not updated to reflect the new regulations covering departmental staff on leave to work for bands."¹¹⁸

Native language programs were the subject of Program Circular E-5. Earlier versions of this circular limited the consideration of native language programs to reserve schools only. The 1975 program circular expanded that consideration to permit support of native language programs "in schools attended by Indian children", thereby including provincial schools. Funding for native language programs was to be provided on an annual basis through proposal submissions. Proposals had to incorporate an evaluative component. Funding could be used for salary of a native language instructor and for required supplies of native language materials. Native language could be incorporated as the medium of instruction for the first four years of schooling, be taught as a subject from kindergarten to grade thirteen, or utilize an alternative method of bilingual instruction as identified by the Band.

Program Circular E-7 related to the provision of funds to Bands for curriculum enrichment projects. "Cultural projects" were defined as "handicrafts, artifacts, tribal history, dances, songs, legends and other cultural experiences identified by the

Band."¹¹⁹ As in the native language program guidelines, funding for curriculum enrichment projects was to be on an annual basis through annually submitted proposals. In earlier draft guidelines on curriculum enrichment, Band employment of resource people was included as a potential curriculum enrichment project.¹²⁰ However, reference to the employment of resource people was eliminated in the 1975 E-7 circular.

The National Indian Brotherhood objected to the method of funding stipulated in both program circulars, E-5 and E-7.

In most cases, both of these programs are on-going and require long-range planning and guarantees. The guidelines, however, provide for annual submissions with no assurance of continued funding from year to year. Here again, it is not made clear that the basic amount (which is not specified) for cultural enrichment, applies only to departmentally operated schools, (2.1) and not to Band controlled programs.¹²¹

The National Indian Brotherhood also commented with respect to the evaluative component of the native language program that "many Indian people" might "resent the Department's sudden concern for evaluation of band operated programs, when in the past, department run programs were systematically neglected."¹²²

Program Circular E-8 appeared with the initial set of draft guidelines prepared by the Department in early 1975. However, by mid-1975, draft E-8 was no longer in circulation. The Executive and Planning Committee of the Department of Indian Affairs and Northern Development had accepted the recommendations contained in Circular E-8 on February 20, 1975, subject to approval by the Minister.¹²³ Several of the support services encompassed in E-8 (clothing and student allowances below grade ten) had already

been terminated in Alberta in September 1974. Plans had also been made in the Alberta Region to eliminate the noon lunch supplement program aspect by July 1, 1975. Both the regional decisions in Alberta and the recommendations contained in draft E-8 appear to have been formulated unilaterally by government representatives.

The educational support services considered in Program Circular E-8 included the following: noon lunch supplement; clothing allowances; student personal allowances; school supplies; extra-curricular activities; and educational counselling services. The expansion of joint education had made provision of these support services necessary in order to ensure that Indian children had standards of food, clothing, bus fare, school supplies and extracurricular activity fees comparable to non-Indian children attending the same schools.¹²⁴ Education counselling services had been instituted to ensure the necessary social and educational support to Indian high school students.¹²⁵ Program Circular E-8 made the following recommendations regarding support services to Indian pupils: discontinue or freeze at current levels the noon lunch supplement program; discontinue clothing allowances except for students in residences or boarding homes; restrict student personal allowances to grades nine through twelve; discontinue students' personal allowances and school supplies for off-reserve students; continue the other programs at the current level of funding.¹²⁶ These were the recommendations accepted by the Executive and Planning Committee in February of 1975, with two modifications. The Committee stipulated that if the noon lunch

supplement was frozen, it would be at the thirty-five cents daily per pupil level; if that same program were discontinued, the "resulting financial savings" would be allocated to the Bands involved.¹²⁷

Both Program Circulars E-9 and E-10, regarding daily transportation of students and education studies programs respectively, were viewed as unnecessary by the National Indian Brotherhood if the definitional component of Program Circular E-1 (Education Policy Guidelines--Their Meaning and Purpose, section 2.1) were truly applicable.¹²⁸ Program Circular E-9 established a common basis against which bussing costs could be measured. There was no variation in this circular from 1973 to 1975. Program Circular E-10 "established criteria and conditions for approving education studies proposals" and outlined "funding and related administrative procedures".¹²⁹ Education studies were defined as an investigation of one or more of the following:

local control of education programs, kindergarten, elementary and secondary schooling, native language instruction, curriculum enrichment, post-secondary and vocational education, maintenance of students, student transportation, adult education.¹³⁰

Funding could be provided to individual Band Councils, Band Education Authorities, Inuit Settlement Councils or . . . provincial/territorial Indian associations, with a ceiling of \$25,000 per project. Numbers of potentially funded education studies was cited in E-10 as follows: "Normally, in each school year no more than one education study project is to be funded for a band and association."¹³¹ This was a change in phrasing from an

earlier version, which read as follows: "In each school year no more than one education study project may be funded for each Band and native association."¹³² Changing the word "each" in the latter provision to an "a" preceding the phrase "band and association" could imply a differing interpretation to the amount of potentially funded education studies projects. Requests for education studies projects were to be submitted as proposals comprised of project objectives, time frame, study design and detailed budget. Service contracts could also be negotiated by the Regional Director upon request of a Band or Indian association. Earlier guidelines had Bands as third parties to a service contract.¹³³ That provision was eliminated in the 1975 E-10 circular. Approval of requests was conditional on agreement to submit a final report to the Regional Director and on agreement that the Department could send final reports to other interested Bands.

The E-11 Program Circular was entitled "Educational Assistance" and dealt with the nature of educational assistance to be provided to elementary and secondary Indian students attending schools while residing in boarding homes or in student residences. E-11 merely made reference to another Education Branch publication which had been revised in July of 1971 regarding the Boarding Home Program. Consideration was given in the latter publication to matters of provision of tuition costs, books and supplies, clothing allowances, monetary education allowances, and transportation costs for elementary and secondary Indian students

in the Boarding Home Program. E-11 stated that responsibility for implementing the education assistance guidelines could be delegated to Education Counsellors and Social Counsellors "employed either by the Department or a Band Council."¹³⁴ The National Indian Brotherhood criticized the E-11 circular for being "badly in need of review" and for containing many items which were "meaningless" and "inconsistent with present practices."¹³⁵ The bulk of criticism regarding educational assistance for Indian students, however, was directed specifically at the final program circular to be discussed, the E-12 Program Circular, which provided guidelines for educational assistance to Indian students in post-secondary education.

The E-12 Guidelines: Post-Secondary Educational Support for Indians

One of the avenues envisioned by both the government and Indian spokespeople in 1973 for implementation of the policy of Indian control of Indian education was increased participation of Indians in post-secondary educational experiences.¹³⁶ The government had provided assistance to Indians for vocational and university training during the 1960's and early 1970's based on a series of circular letters and Treasury Board Minutes.¹³⁷ In March of 1972, the authority for Band Councils to operate post-school programs was issued through Treasury Board Minute 710314. The development of transfer guidelines for the post-school program was subsumed in the Department's overall

efforts to provide guidelines related to Band control of education programs.

Draft transfer guidelines for the "Continuing Education Program" were initially provided by the Department of Indian Affairs and Northern Development in August of 1974. Between January, 1975 and September, 1977, at least four additional sets of draft guidelines for the post-school program were released by the Department of Indian Affairs and Northern Development. As part of the E-series guidelines, these post-school guidelines were called the E-12 guidelines. The specific title of the E-12 guidelines varied from "The University and Professional Training Program" in January 1975, "The University and Professional Educational Assistance Program" in April, 1975, and "Post-Secondary Education Assistance Program" in 1977. Treasury Board approval for the E-12 guidelines dated September 1976 occurred in October of 1977 (T.B. Minute 752408, October 20, 1977). The approved E-12 guidelines were not implemented until April 1, 1978.¹³⁸ Throughout 1975-1978, the E-12 guidelines constituted an issue of contention between the government and the Indian people in terms of both the content of the guidelines and the process of their development.

Since the government had agreed in 1973 to pursue change in Indian education through a joint consultative approach, it was anticipated that policy for Indian students in post-secondary educational activities would be developed "in partnership" as well. The post-secondary education program for Indians since 1968

had been operating under the authority of Treasury Board Minute #683751 (September 4, 1968). This Minute had consolidated numerous other Treasury Board Minutes approved in 1960 through 1967 regarding assistance to Indians "in training". A set of rules "providing for grants and allowances with respect to the training, mobility and re-establishment of Indian and Eskimo residents of Canada" was annexed to the 1968 Minute.¹³⁹ The rules were to be applied when Indians or Inuit could not "be provided with assistance under the Manpower Mobility Regulations, 1967, the Adult Occupational Training Regulations, or by any other authority or agency."¹⁴⁰ The rules had an expiry date of March 31, 1972.¹⁴¹ The paper released by the Department on January 30, 1975, entitled "Policy and Administrative Guidelines for the University and Professional Training Program for Registered Indians and Inuit" contained the 1968 Treasury Board Minute number and reflected the Department's effort to update the 1968 rules contained in Treasury Board Minute #683751 specifically related to the university and professional education aspect of the training program.¹⁴² The authority for provision of adult and vocational education to Indians was extended under separate Treasury Board Minute numbers.¹⁴³ However, the manpower training allowance system remained the basis for granting assistance under the university and professional education program.

The inclusion of the 1968 Treasury Board Minute Number on the January 30, 1975, draft policy paper precipitated an irate response from some Indians that the Department had already been

authorized to expend public funds along the new guidelines contained within the 1975 policy paper.¹⁴⁴ The comment was made that "Presumably [sic] all that remains to be done is to obtain a token amount of consultation with Indian organizations before it is implemented."¹⁴⁵ The assumption that the January, 1975 guidelines had been authorized by the Treasury Board was only slightly premature. Treasury Board authorization "in principle" for the post-secondary education program for Indians was obtained by the Department by September of 1975.¹⁴⁶ Subsequently, the issue of "token consultation" was once again raised with regard to this submission to the Treasury Board.

In a letter dated July 16, 1975, the Minister of Indian Affairs informed the President of the National Indian Brotherhood that he was approaching Treasury Board "seeking only authorization in principle for the broad parameters and new financial features which have been proposed for the program."¹⁴⁷ However, the Union of Ontario Indians contended in a letter to the President of the National Indian Brotherhood that the Minister had already submitted the E-12 guidelines to the Treasury Board on July 10, 1975, six days prior to informing the NIB President of his intention to do so.¹⁴⁸ The latter letter also questioned the meaning of "seeking authorization in principle": could radical changes to the submission be made thereafter; could the policy be implemented any time just by notifying Treasury Board.¹⁴⁹ Answers to these questions had serious implications for the nature

of the consultative and negotiation process for the E-12 policy being advocated by the Department.

The submission by the Department to the Treasury Board seemed to the Union of Ontario Indians to be an ambiguous act for another reason. In two separate meetings held with representatives of the Union of Ontario Indians on July 9 and July 16, representatives of the Department had not only agreed to a plan whereby negotiations regarding the E-12 guidelines would begin in October or early November, 1975 but also agreed that there would be "no submissions made to Treasury Board until this time."¹⁵⁰ In spite of these agreements, the E-12 guidelines had been submitted to Treasury Board on July 10. In terms of these actions regarding the E-12 guidelines, the Union of Ontario Indians questioned the sincerity of the Department in "wanting to conduct meaningful consultations and negotiations with Indian people".¹⁵¹ Accordingly, they requested the National Indian Brotherhood to urge the Minister of Indian Affairs to withdraw the E-12 guidelines from Treasury Board until negotiations with Indian representatives had been completed.

The process for consultation outlined by the Minister in a letter dated September 18, 1975, to the President of the National Indian Brotherhood consisted of the following: circulating copies of the proposed Program Circular by October 1, 1975; requesting comments or alternative proposals to be submitted by January 1, 1976; and having the Department Education Branch hold briefing sessions with Regional employees and Indian organizations, if

requested.¹⁵² This process was viewed by some Indians as contrary to the philosophy of Indian control of Indian education.

The policy is made, open for comments that can only be considered as reactionary when in fact the comments coming from the grass-roots level should be initiatory. Since the Department has found it necessary to devise a new education policy, the Indian people at the reserve level should draw up an entirely new format of a policy based on 'needs perceived' not a 'response' draft to the already proposed guidelines of E-12, which is based on funds available methods.¹⁵³

The argument advanced was that Indians should be allowed the opportunity to initiate policy based on 'perceived needs' rather than to be continually put into a position of having to react to Department policy documents which reflected available funding rather than grassroots needs. The overall objection to the process of consultation as suggested by the Minister was that the Department had already secured Treasury approval for the E-12 policy without first having secured the approval of Indians or Indian organizations. The confusion over the meaning of Treasury Board "approval in principle" of policy parameters and Treasury Board approval of detailed policy guidelines compounded the frustrations regarding the intent of the Department's proposed process of consultation in development of post-secondary education policy.

The E-12 guidelines which were approved by the Treasury Board in October of 1977 incorporated several significant modifications to the draft guidelines which were released in 1975. These modifications were in areas which had received widespread criticism from various Indian organizations. One of these

modifications was the elimination of mandatory "Educational Assistance Agreements" to be signed by the student and the Department. In the 1975 draft E-12 guidelines, a system of "Educational Assistance Agreements" was to be established whereby the funding agency's commitment to the student would be clarified and the performance standards expected of the student would be stipulated. If a student was unable to fulfill the expectations delineated in the Educational Assistance Agreement and was not a first-year student, under a "special contingent conditions options" section the student could be required to contribute a portion of funds equal to the amount paid to the student the previous year before additional funding from the Department could be received. Or, if the student did not complete seventy-five percent of the courses agreed to in the Educational Assistance Agreement, the student had to provide proof of completing sufficient credit courses to fulfill the performance standard of that Agreement before any additional Departmental funding could be made available. The use of "Educational Assistance Agreements" was eliminated in the 1977 guidelines; performance standards were to be based on the criteria generally in operation at the institute of higher learning which the student attended.

A second major criticism voiced by Indians regarding the 1975 draft guidelines was the personal contribution aspect of the program.¹⁵⁴ Each student was required to contribute a percentage of gross income earned the twelve months prior to application for educational assistance. The level of required student

contribution also took into consideration the number of dependents of the applicant. Objection to the notion of personal contribution toward educational costs were twofold: one argument revolved around the issue of education as a treaty right; the other objection stemmed from viewing mandatory personal contributions as a negative incentive towards continuing in post-secondary programs, when the purported intent of the whole E-12 program was to encourage Indians to pursue post-secondary education. In the 1977 guidelines, the notion of personal contributions by the student became less specified, although the student was still expected to indicate to the Department the amount of personal funds which could be used to cover a portion of his or her educational costs.¹⁵⁵

The 1975 draft guidelines stipulated that applicants had to basically be free of debt before receiving Departmental funding.¹⁵⁶ The objection was made that this requirement was "totally without precedent", not a condition for non-native students applying to provincial educational assistance programs, paternalistic, and an unacceptable provision of discretionary powers given to the person who would determine "excessiveness" of a particular student's debts.¹⁵⁷ The free-from-debt criterion became somewhat more vague in the 1977 guidelines; a statement was included under the student eligibility section which made reference to the applicant being aware that funds provided to students through the program were not "intended to be sufficient to assist the student to pay off personal debts."¹⁵⁸

The allowed completion time for post-secondary education which was stipulated in the 1975 draft guidelines was criticized for being insufficient, unrealistic and rigid. (Chiefs of Ontario 22Mar76:7; CNLSA Mar75:2) The allotted completion time was increased in the 1977 guidelines as follows:

Post-secondary Education Level	Maximum student months*	
	1975	1977
A. Community College, C.E.G.E.P., etc.	30	40
B. Bachelor's Degree or Equivalent	32	40
C. Honours Bachelor Degree	40	48
D. Master's Degree or Equivalent	18	24
E. Doctorate (Ph.D.)	18	24
TOTAL	76	96

* A student month is a full month in which a student has received educational assistance.

Figure 8. Maximum student months for post-secondary education, 1975 and 1977

Source: DIAND, Draft Program Circular E-12, 3 April 1975; DIAND, Program Circular E-12 (T.B. Minute 752408, 20 October 1977).

This increase in student months for the various levels of post-secondary education can be viewed as a positive response to the criticisms made regarding this element of the post-secondary education assistance program. Other areas of the program which received criticism in 1975, however, were not modified by 1977. Among these criticisms were that the system of sending and receiving counsellors and their duties as delineated in the guidelines were paternalistic; that the requirement for students to avail themselves of funding from all outside sources was a

transfer of financial responsibility for Indian education to provinces which denied federal responsibility and treaty obligations; that considering any bursaries or outside funding received by students as replacement to Department funding was a negative incentive to Indian students; and that insufficient funding was being allocated to the post-secondary education program in light of the increasing numbers of Indian students entering the post-secondary education program.¹⁵⁹ These criticisms were voiced again in late 1978 when revision to the E-12 Program Circular was undertaken by a national Indian student committee.

While the Department of Indian Affairs and Northern Development was engaged during 1973 through 1976 in its self-defined process of consultation regarding the E-12 guidelines, the National Indian Brotherhood was also engaged in a consultative process with Indian students, provincial/territorial organizations, and education policy people in order to prepare a counter proposal to the E-12 guidelines. This counter proposal was submitted to the Department in early 1976.¹⁶⁰ The E-12 program submission by the Department to the Treasury Board in September of 1976 incorporated some changes suggested by the National Indian Brotherhood counter proposal and some of the suggestions made in individual submissions received by the Department.¹⁶¹ The Treasury Board, however, rejected the September 30, 1976, submission. An assessment of the submission was subsequently undertaken by the Planning Branch of the Treasury

Board in order to provide the Department with "a base on which to develop subsequent post-secondary education policy."¹⁶² The Treasury Board Planning Branch assessment report referenced internal management problems of the Department of Indian Affairs and Northern Development; inaccurate enrolment projections, making cost projections a difficult exercise; an apparent larger per capita grant, on the average, for Indian students than for "non-native students of similar background"; a need to separate the native studies program support component out of the general post-secondary program; and, the need for a E-12 program evaluation plan to be submitted by the Department.¹⁶³ In spite of the concerns raised in the June, 1977, assessment report prepared by the Treasury Board Planning Branch, the E-12 guidelines dated April 1976 which were initially submitted in September, 1976, were approved by the Treasury Board in October of 1977 with the provision that funding for the program be frozen for three years at the 1976-77 funding level.

The freeze on funding for the post-secondary education program had political ramifications for the National Indian Brotherhood in 1978. The Department of Indian Affairs, in maintaining that the National Indian Brotherhood had helped to develop and supported the E-12 guidelines, considered complaints by the National Indian Brotherhood regarding the guidelines as unjustifiable. Furthermore, the Department implied that complaints by individuals or organizations regarding the E-12 guidelines more properly should be lodged with the National Indian

Brotherhood rather than with the Department.¹⁶⁴ The National Indian Brotherhood responded to the criticism of its part in the development of the E-12 guidelines by stating that it supported the E-12 program and not the E-12 guidelines.

The Provincial/Territorial Organizations and the National Indian Brotherhood support the new E-12 program - NOT THE GUIDELINES. The Provincial/Territorial Organizations and the National Indian Brotherhood are still not satisfied with the E-12 guidelines. We still maintain the guidelines require further re-evaluation at this point in time, in addition to management, accountability and justification upgrading.¹⁶⁵

Furthermore, the National Indian Brotherhood pointed out, its involvement in the E-12 policy development had always been in terms of participation in the re-evaluation of the E-12 Guidelines and not the E-12 program or the Department's management of that program.¹⁶⁶ When the Treasury Board Planning Branch assessed the E-12 program in 1977, the NIB argued, it found that the E-12 program itself required upgrading not that the guidelines themselves were objectionable.

The new guidelines developed by the Provincial/Territorial Organizations, Indian students, and the National Indian Brotherhood were rejected by Treasury Board because Treasury Board felt the program required internal improvement in terms of management, accountability and justification. We could have submitted new guidelines until hell froze over, nothing would have pleased the Department of Indian Affairs more because the real issue would have remained hidden from our knowledge. (That is the mismanagement of the E-12 program by the Department of Indian Affairs).¹⁶⁷

The National Indian Brotherhood felt that the Department was using "divide and conquer" tactics by attempting to focus blame for the funding freeze for the E-12 program on the National Indian Brotherhood.

How can the National Indian Brotherhood be blamed for the Department of Indian Affairs' incompetence in administering and managing the E-12 program? It only goes to prove how low our public servants will stoop to put the blame for their own incompetence and inefficiencies on the Indian people and the National Indian Brotherhood.

We should always keep issues like the E-12 in mind as a reminder to ourselves that the government is always striving to keep us divided and understand the level they would stoop to accomplish this.¹⁶⁸

The funding freeze for the E-12 program and the need to reaffirm unity in a policy development area likely contributed to the rejection of the Treasury Board approved E-12 guidelines at the August, 1978, General Assembly of the National Indian Brotherhood.

Two lengthy resolutions regarding the E-12 post-secondary education program and the E-12 Program Circular Guidelines of October, 1977, were passed at the 1978 General Assembly . Included in these two resolutions were that the E-12 Program Circular was deemed rejected in its current form; that implementation of the E-12 Guidelines be halted immediately; and that any revised E-12 guidelines incorporate the revisions which were attached to the motion.¹⁶⁹ An evaluation of the E-12 program, with "deep involvement" of the Indian people, and a lifting of the three-year funding freeze on the E-12 program were also called for.¹⁷⁰

In November of 1978, the E-12 program and program guidelines were the focus of a three-day conference held in Ottawa. The conference, organized by the National Indian Brotherhood, was the first all-Indian post-secondary students conference; over ninety students from across the country met to discuss post-secondary

education policy and revisions to the E-12 guidelines. Outcomes of the conference included the formation of the National Steering Committee of Indian Students, comprised of eleven provincial/territorial student representatives; the formulation of proposed revisions to the E-12 Program Circular, which were subsequently submitted to the Minister; and an initial meeting between student representatives and the Minister at which time the Minister agreed to meet again in the near future with student representatives regarding post-secondary education policy. A second meeting between the Minister and the National Steering Committee of Indian Students was held on December 15, 1978, at which time the Minister was presented with a statement of "Education as a Right". The Minister rejected this statement "but committed his Department to immediately revising the guidelines requesting that the National Indian Brotherhood act as official coordinating body for consultations."¹⁷¹ No action was taken by the Minister on the E-12 guidelines for the remainder of 1978.

At the close of 1978, the E-12 guidelines remained intact as approved by Treasury Board in October of 1977. The National Indian Brotherhood's position remained a firm rejection of the guidelines in that form. The commitment to consultation with Indians regarding post-secondary education policy had been reaffirmed by the Department of Indian Affairs and Northern Development. An elaborate revision of the guidelines, developed by Indian students at a national conference, stood ready for incorporation into policy. But the fundamental issue of education

"from cradle to grave" as an Indian right remained unresolved. That same issue had failed to be resolved in the national negotiating forum, the Joint Cabinet/National Indian Brotherhood Committee. As long as the E-12 guidelines continued to be the particular instrument for implementation of post-secondary education policy, their delineated form and any proposed revision to that form would necessarily reflect the relative position on the fundamental issue of education as an Indian right.

The 1975 D-series and E-series Guidelines: Summary .

Implementation of Indian control of Indian education as envisioned by government and Indian leaders in 1973 was to incorporate a process of "partnership" and "consultation". The D-series and E-series guidelines which were released by the Department of Indian Affairs and Northern Development in mid-1975 provided a framework for transfer of education programs to Band Councils. The Department maintained that the guidelines had evolved through consultation with Indians and Indian organizations. The system of program guidelines was viewed by the Department as the means to insure that good management principles and proper accounting procedures would continue to be integral aspects of program operation.

The Indian spokespeople maintained that no disagreement existed regarding the need for accountability in the expenditure of public funds. As well, the need for program guidelines in general, was not disputed. The primary issue was the manner in

which the particular 1975 guidelines were effected, unilaterally and without consultation on many of the new policies which were embodied in the guidelines. What Indian leaders and Indian organizations advocated in mid-1975 was not eliminating program guidelines altogether but rather freezing the 1975 guidelines and continuing under the old guidelines until such time as "full consultation and agreement" could be reached on new operating procedures.¹⁷²

Program Circulars D-1 and D-4 were authorized as policy on April 1, 1976.¹⁷³ These program circulars were the "cornerstone" guidelines for structuring local Indian government for purposes of program transfer and subsequent program management. Program Circular E-12, regarding the post-secondary education program for Indians, was authorized by the Treasury Board in October of 1977. The remaining D-series and E-series guidelines continued to serve as "instructions to Department staff" for the "management of the Department's activities and operations". Determining the extent and degree to which these guidelines were specifically applied in Band-managed schools during 1975 through 1978 would require an analysis of individual Band program transfer agreements. The Department maintained that the effort to introduce guidelines was abandoned after the 1975 guidelines were rejected by the National Indian Brotherhood.¹⁷⁴ Various Indian spokespeople contend that the guidelines were applied, though inconsistently, by Departmental staff.¹⁷⁵ By the end of 1978, the Department of Indian Affairs and Northern Development had issued another general

policy circular to consolidate and explicate government policy for Indian education.

E-1 Policy Circular, 1978: Educational Policy of the Department of Indian Affairs and Northern Development in 1978

In November of 1978, the Department of Indian Affairs and Northern Development issued the E-1 Program Circular. This program circular replaced all previous policy statements regarding the education program. It outlined the official education policy of the Department and included "those changes in the delivery of educational services which have been developed jointly by the Department and Indian representatives over the last several years."¹⁷⁶ The purpose of developing and issuing this Circular was to consolidate existing policies "and to encourage an analysis of the educational services and support which we provide to Indian students."¹⁷⁷ The Minister of Indian Affairs referred to the E-1 Program Circular as administrative guidelines for Departmental programs managed by Regional and District Department staff which "need not be adopted by the Bands for their own [Band-managed programs]."¹⁷⁸ Policy areas discussed in the E-1 Program Circular included the following: kindergarten; elementary and secondary education; post-secondary education; adult education and vocational training; daily and seasonal transportation; student residences, group and boarding homes; Cultural Education Centres; and education capital construction.

The Department's position at the end of 1978 regarding implementation of educational policy for Indians is revealed

through an examination of the E-1 Program Circular. The policy document reiterated the Department's position that government responsibility for education of Indians was limited to Indians resident on reserves or crown lands (Sections 2.2; 3.1; 3.4; 4.2; 4.3; 4.8; 4.9; 7.1;8.1). Education programs were to conform to the following:

the pertinent statutory provisions of the Indian Act (sections 4(3), 69, and 114-123), together with the provisions of any subsequent subordinate instrument (Orders-in-Council, T.B. Minutes, regulations, etc.) enacted for that purpose.¹⁷⁹

The above legislation and subordinate legislation was to apply to programs of Indian education "funded and/or operated by the Department".¹⁸⁰ This phrasing could be interpreted as contradictory to the Minister's contention that E-1 need not apply to Band-managed programs, since all Band education programs are funded by the Department of Indian Affairs and Northern Development.

The principles of "parental responsibility" and "local control" as outlined in the 1972 National Indian Brotherhood document, Indian Control of Indian Education were to be followed. However, several qualifying phrases narrowed the interpretation of these principles. These principles were to be followed "wherever practical and desirable"; accordingly, funding limitations could prevent the operation of these principles. The two guiding principles were applicable in provision of kindergarten, elementary and secondary education services only; pre-school and adult education were thus not recognized as coming

under the purview of parental responsibility and local control. The two principles were also only applicable with regard to status Indian children whose parents lived on reserve or crown lands; accordingly, the principles did not apply when parents resided off-reserve, thereby eliminating consideration of federal support for urban Indian representation on school boards.

With regard to the transfer of education programs to Bands, the E-1 Program Circular stated that Program Circulars D-1, D-4 and E-3 were to be followed.¹⁸¹ These latter three program circulars provide mandatory structure for the following areas: procedures for initiating the program takeover process; statements to be included in transfer agreements; conditions for continued Band program operation; responsibilities of Chief and Council with respect to program takeover; accounting; receipt of funds; purchasing; payment approval; disbursements; contracts and tenders; travel; inventories; budgets; audits; and which particular education programs were "transferrable", "transferrable under Band-Department negotiated agreements", "transferrable with concurrence of a third party", or "non-transferrable. All of these areas in the process of transfer of education program authority to Bands continued to be Departmentally regulated .

Financing of educational services to Indians, including Band-managed services, was through Departmental Estimates; "normal federal government policies, standards, requirements and controls" were to apply to the administration of the education program.¹⁸² Accordingly, provision of education to Indians continued to be

based on funding allocation rather than perceived needs. Conformity to federal administrative procedures was yet mandatory in the education program.

The E-1 Program Circular stated that curriculum materials which stress Indian identity, values and cultural heritage "should" be incorporated in the education program "wherever practical and desirable".¹⁸³ Accordingly, funding limitations rather than perceived needs determined the extent of this incorporation.

Kindergarten education could be provided for Indian children living on-reserve "if requested by a Band, and as funds and man-year allotments permit".¹⁸⁴ Accordingly, provision of kindergarten was clearly stated to be linked to financial and man-year availability rather than to be a right of Indian children. A kindergarten program was to be considered voluntary and on a half-day attendance basis. Upon request, operation of a kindergarten program could be "delegated" to a Band.

The elementary and secondary education program was described as a provision of educational services according to the Indian Act to "status Indian children whose parents live on-reserve". Programs of basic studies in "federal or Band operated schools" were to be ones recognized by the appropriate provincial Department of Education; content modifications could be incorporated "as agreed upon by Bands, Regions and, where necessary, provincial Departments of Education."¹⁸⁵ The inclusion of "Band operated schools" in this particular policy statement

appears to suggest that Band control of content modification "should be" subject to agreement with "Regions" and potentially to provincial Departments of Education. The reason cited was "for student mobility purposes".¹⁸⁶ Other stipulations in the elementary and secondary education program included the following: teachers in federal or Band operated schools should be eligible for or in possession of provincial teaching certificates; access to student counselling and health care services, as required, were to be provided to any status Indian student whose parents live on-reserve; and the language of instruction in the elementary and secondary school program was to be English or French, "but provision may be made in lower elementary grades for some instruction in a local native language."¹⁸⁷ The latter stipulation regarding language of instruction did not specifically reference either federal or Band operated schools.

In the post-secondary education program, services were to be provided through accredited provincial institutions, although agreements could be entered into with institutions for special "Indian sensitive" programs. "Indian sensitive" programs were defined as those programs "which include special counselling and tutorial services, materials, course modifications, instructional approaches, etc."¹⁸⁸ Educational assistance to post-secondary Indian students was to be provided according to the 1977 Treasury Board approved E-12 Program Circular. Maximum student months for post-secondary educational assistance was reiterated to be ninety-six student months; assistance could be terminated "if a

student demonstrates lack of ability or willingness to meet the assumed academic or financial management responsibilities";¹⁸⁹ and the appeal procedure as stipulated in Program Circular E-12 was recognized. Post-secondary student assistance programs were to be administered by Bands upon request. The use of "shall" in the phrase "post-secondary student assistance programs shall be administered, upon request, by local Bands" contrasts with the use of "may" in "Upon request, the operation of a Kindergarten program may be delegated to a Band".¹⁹⁰ The use of "shall" in the former suggests that transfer of authority to Bands, upon request, to administer the post-secondary education assistance program was non-discretionary whereas the delegation of authority to Bands to operate their respective Kindergarten programs remained a discretionary power of the Minister.

Departmental discretionary power was implicit in the provision of adult educational services on reserves. These services entailed basic literacy programs, academic upgrading, job-readiness training, life skills training, and social education programs. Student allowances could be paid; however, no allowance could exceed prevailing Manpower rates.¹⁹¹ Provision of vocational training programs, on or off-reserve, was also at the discretion of the Department. Payment of student allowances for vocational training was discretionary as well and not to exceed prevailing Manpower rates. The Departmental policy for provision of adult education and vocational training programs continued to be that these aspects of education were not education rights of

Indians but "privileges" accorded at the discretion of the Department of Indian Affairs and Northern Development.

Policy regarding daily and seasonal transportation of Indian students on reserve or, where required, off-reserve continued to be regulated under previous Departmental directives.¹⁹² Band Councils could be in charge of transportation arrangements.¹⁹³

Policy for student residences, group and boarding homes continued to be regulated under previous Departmental directives and regulations.¹⁹⁴ Band Councils could be in charge of such arrangements.¹⁹⁵ Individual students, it was suggested, should wherever possible "be given the responsibility for the direct financial management of the allowances and disbursements involved in this program."¹⁹⁶

The E-1 policy circular stated that the Cultural Education Centres Program continued to be operational under the Program authority contained in Treasury Board Minute #753033 of December 1, 1977. Programs offered by Cultural/Educational Centres, it was reiterated in E-1, were to be "supplementary or complementary" to existing programs of education.¹⁹⁷ No Centre program "could duplicate or take the place of regular elementary or secondary education services".¹⁹⁸ The role of the National Centres' Steering Committee continued to be one of "assisting in" rather than actually directing the overall development of the Program.¹⁹⁹

Policy for education capital construction continued to be that funding would be budgeted for and controlled within each Region. Administration of such funding could be transferred to

Bands, upon request, under Treasury Board Minute #751608 of July 8, 1977. Educational capital construction projects could include elementary and secondary schools, teacherages, and the provision of necessary infrastructures, such as sewer and water.²⁰⁰ No education capital construction funds could be allocated for Cultural/ Educational Centres or post-secondary education facilities.²⁰¹

The Indian response to this program circular was not formally initiated until February of 1979, when the Education Sub-Committee of the National Indian Brotherhood met to discuss the E-1 Program Circular. Since the formal national Indian response is outside the timeframe of this study, only summary comments are herein made. The National Indian Brotherhood rejected the E-1 Program Circular on the grounds that it directly contradicted Indian Control of Indian Education policy principles of parental responsibility and local control; that it had been "developed without consultation with Indian leaders;" and that it "reeked" of "abrogation of Federal responsibility for Indian education -- no support for off-reserve Indians and constant reference to provincial education regulations and standards."²⁰² Many of the criticisms proffered by the National Indian Brotherhood for specific E-1 policy statements cited Departmental discretion in provision of various educational services as being inconsistent with and a dilution of Indian control and an impediment to Indian self-determination.²⁰³ The exclusion of educational services to off-reserve Indians was cited by the National Indian Brotherhood

to be contrary to Indian Control of Indian Education policy.²⁰⁴

The National Indian Brotherhood called for a suspension of the E-1 Program Circular and all subsequent guidelines "until appropriate consultation of Indians take place to result in an 'Indian-developed' Indian education policy."²⁰⁵

The release of the E-1 Program Circular in November, 1978, echoed a pattern similar to the release of the 1975 D-series and E-series guidelines. The Department contended that the Program Circular had been "developed jointly by the Department and Indian representatives".²⁰⁶ The National Indian Brotherhood maintained that E-1 had been developed "without consultation with Indian leaders".²⁰⁷ Both E-1 and the E-series guidelines were stated to be applicable to Departmental programs, serving as guidelines or instructions to Departmental staff. However, in both instances, the National Indian Brotherhood perceived these circulars as applicable, directly and indirectly, to Band-operated programs, thereby curtailing Indian control of Indian education.

The Department of Indian Affairs and Northern Development
as an Agent for Implementation of Indian Control
of Indian Education: 1978

During 1976-1977, the Department of Indian Affairs and Northern Development reorganized its Policy, Planning and Research Branch into the Policy, Research and Evaluation Branch. The Evaluation Division of this latter Branch was established "to equip the Department with a capability of assessing program effectiveness."²⁰⁸ Evaluation of the education activity was

determined to be a high priority. Accordingly, in July of 1978, the Program Evaluation Branch released a report entitled "A Recommended Plan for Evaluation in Indian Education". A mirror view of the Department of Indian Affairs and Northern Development as an agent for implementation of educational policy in 1978 can be gleaned through an examination of this document.

The Program Evaluation Branch report cited five problem areas in Indian education as perceived by "a few dozen experienced educators, in headquarters, five regions, and the Indian community."²⁰⁹ These five points of agreement were as follows:

1. DINA administers a school system more than managing the development of human potential. This approach implies a weak emphasis on learning as such.
2. At least nine distinct individuals or groups 'run' Indian education in some respect. No one seems clear about who is in charge.
3. Those working in the system feel a lack of vision in the Activity. They are not sure how their efforts fit together for a common purpose.
4. The Activity suffers from a weak policy framework. In the absence of such guidance, regions and districts must grope independently toward adequate ways to handle issues such as local control.
5. No one places much trust in aggregate data about the Activity. On the other hand, regions and districts seem to know what is going on in their territory.²¹⁰

The report suggested that these problems appeared to be "symptoms of a system in transition", as departmental control yielded to Indian control.²¹¹ However, the report concluded that with more systematic leadership, the "confusion and disruption characteristic of such a change" could be reduced.²¹² The

evaluation of the education program was stated to be the means to provide an overview of the education activity in order to provide a foundation for better decisions in the process of change.

Issues identified as priority issues, based on a survey of departmental staff and interviews with Indian educators, clustered around four main topics. These topics were: local control; quality of learning; native culture; and education unit costs. Indian educators additionally identified the subjects of counselling and access to post-secondary education as being high priority. The researchers also determined capital construction and maintenance, comprising twenty percent of the total education budget, to be an area for urgent evaluation.

The recommendations in the report by the Program Evaluation Branch included the following: (1) the establishment of an Indian Education Evaluation Advisory Board to serve as a forum for consultation in education program evaluation; the Board would be comprised of ten Department representatives and ten Indian educators; (2) centering the evaluation plan on four lines of enquiry: local control, unit costs, native culture and quality of learning; and (3) including some "short-range" evaluation projects to maintain flexibility and accommodate miscellaneous evaluation jobs; examples of these short-range evaluation areas included post-secondary demand, high school retention, and the nominal roll.

The National Indian Brotherhood concurred with the need for an evaluation of the current status of Indian education on a

national scale, especially for purposes of combatting funding cutbacks.²¹³ The notion of an Indian Education Evaluation Advisory Board received favorable response as well.²¹⁴ However, the call for "Indian-controlled Implementation" of educational policy predominated. By 1978, the Department of Indian Affairs and Northern Development was viewed as contributing to the demise of the 1973 policy of Indian Control of Indian Education.²¹⁵ Bands which had taken steps toward assuming control of their respective education programs had "encountered numerous obstacles, set backs and sheer frustration in their dealings with the Departmental Officials in Education."²¹⁶ The definition of "Indian control of Indian education" was viewed as having been "modified by the Department... to mean at best joint-management, without proper Indian consent and approval."²¹⁷ The Department of Indian Affairs and Northern Development had failed, in the view of the National Indian Brotherhood, to serve as an effective agent for implementation of educational policy during 1973 through 1978.

CHAPTER FIVE ENDNOTES

1. The Indian and Inuit Affairs Program averaged more than half of the DIAND budget (between 50-60%) during 1973 through 1978. (J.Rick Ponting and Roger Gibbins, Out of Irrelevance (Toronto: Butterworth, 1980), 98.) Number of IIAP personnel during 1973-1978 was approximately 5500-6500 per year. (INAC, Indian Conditions: A Survey (Ottawa: INAC, 1980), 113.)

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16. "Core Fund," Dialogue 1 (May 1974), 1.

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41. Ibid.

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45. David Ahenakew to O.M. Zakreski, Regional Director, Saskatchewan Region, n.d. (August 1974?), 4.

46. Ibid., 2.

47. Ibid., 4.

48. DIAND, "Action on Recommendations From the Last Regional Directors' Conference in Kingston, Ontario," n.d. (January 1975?), 1-2.

49. DIAND, "Summary of Proceedings at the Regional Directors' Conference November 4 to 6, 1974, Holiday Inn, Kingston, Ontario," 19.

50. Anonymous, "Commentary: Memo Re Action on Recommendations from the Last RD's Conference in Kingston, Ontario," n.d.

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52. House of Commons Standing Committee on Indian Affairs and Northern Development, Minutes of Proceedings and Evidence, 8 May 1975, Issue Number 28, 11.

53. House of Commons, Debates, 30 May 1975, 6282; House of Commons, Debates, 12 June 1975, 6706.

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55. O.M. Zakreski to Federation of Saskatchewan Indian Chiefs, 3 March 1975; House of Commons, Debates, 30 May 1975, 6282; House of Commons, Debates, 12 June 1975, 6709.

56. House of Commons, Debates, 6 May 1975, 5509; 21 May 1975, 5959, 5964; 4 June 1975, 6429; 12 June 1975, 6695; 11 December 1975, 9925.

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72. Anonymous, "Commentary: Program Circular D-1 (Prepared for Federation of Saskatchewan Indians, 1975?), 3.
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98. Ibid., 5.
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101. DIAND, Education Branch, "Indian Band Council Involvement in the Management of School Programs," 1 October 1973, 1.
102. DIAND, Education Branch, "Guidelines Related to the Band Control of Education Programs; Discussion Draft Only," August 1974, Appendix I, 2.
103. DIAND, "Program Circular E-4", 1 January 1975, Section 2.1.
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181. Ibid., Section 2.3.
182. Ibid., Section 2.5.
183. Ibid., Section 2.6.
184. Ibid., Section 3.1.
185. Ibid., Section 4.4.
186. Ibid.
187. Ibid., Section 4.6.
188. Ibid., Section 1.2.c.
189. Ibid., Section 5.6.
190. Ibid., Sections 5.4 and 3.3, respectively.
191. Ibid., Section 6.2.
192. Ibid., Sections 7.2 and 7.5
193. Ibid., Sections 7.1 and 7.3.
194. Ibid., Sections 8.2 and 8.3.
195. Ibid., Sections 8.1 and 8.3.
196. Ibid., Section 8.4.
197. Ibid., Section 9.3.
198. Ibid., Section 9.4.
199. Ibid., Section 9.6.
200. Ibid., Section 10.3.
201. Ibid., Section 10.6.
202. National Indian Brotherhood, "E-1 Policy Update", 8 August 1979, 1.
203. National Education Liaison Meeting, "E-1 Critique", February 19-21, 1979, 3,5,7.
204. Ibid., 4.

205. National Indian Brotherhood, "E-1 Policy Update", 8 August 1979, 1.
206. DIAND, "Program Circular E-1", 1 November 1978, Section 1.1.
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208. DIAND, Annual Report 1977/78, 38.
209. DIAND, Program Evaluation Branch, "A Recommended Plan for Evaluation in Indian Education", July 1978, i.
210. Ibid., i-ii.
211. Ibid., ii.
212. Ibid.
213. National Indian Brotherhood, "President's Report to the General Assembly of the National Indian Brotherhood, September 1977-August 1978", 5.
214. Alayne Bigwin, "Synopsis Educational Development Program" August 1978, 5.
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CHAPTER 6

SUMMARY AND CONCLUSIONS

Summary

Federal policy for provision of educational services to Indians as of February, 1973, comprised the principles of parental responsibility and local control. At the advent of the policy shift to Indian control of Indian education, the government and Indian people shared many similar perceptions of which educational areas required change. Among these areas were increased involvement of Indians in school management and administration; increased participation of Indians in joint school and tuition agreements between the government and the provincial Departments of Education; enhanced curriculum development in areas of Indian studies and Indian cultural enrichment; increased Indian language instruction; increased attendance of Indians in post-secondary education, including teacher-training programs; and continued support for Cultural/Educational Centres. All of these education areas experienced positive change during the years 1973 through 1978.

Several fundamental educational policies which were perceived by Indians as aspects of implementation of Indian control of Indian education were not realized during 1973 through 1978. These envisioned policy changes included provision of educational services to Indians based on community-perceived needs rather than on available funding; termination of the general education agreement with British Columbia, which was viewed as being in

violation of the principles of parental responsibility and local control; inclusion of Band Councils as first party (not third party) signatories to education agreements formulated after 1973; provision of on-reserve facilities in all cases where there was a community-perceived need; and the federal recognition of education as a right of Indians in Canada, thereby allowing for the expansion of educational services to off-reserve Indians and increased support for Indians in post-secondary education.

The government and the Indian people also shared a vision in 1973 for how the educational policy and program changes were to transpire. There was to be an "educational partnership", with change in Indian education occurring in "consultation and cooperation". The change pace was to be determined by individual Bands, according to their respectively perceived state of community will and technical readiness. Federal responsibility for provision of education to Indians as defined in the Indian Act was to remain intact, but legislative revision was to be jointly explored for bringing the education sections of the Indian Act into the "modern era".

In the spirit of a "policy of participation", the Joint Cabinet/ National Indian Brotherhood Committee was established in 1974. Through a three-tiered structure comprised of a Cabinet Committee level, a Joint Sub-Committee level and a Joint Working Group level, a national forum for "dialogue" in policy formulation was created. Two fundamental elements of the Canadian Government - Indian Nations relationship were to be explored in this national

forum: Indian Rights and Claims Processes and Indian Act Revision. Within the process of Indian Act revision, changes to the education sections of the Indian Act were sought in order to facilitate transfer of education programs to Band Councils and implementation of the stated educational policy of Indian control of Indian education. While three Treasury Board Minutes had made possible the transfer of kindergarten, post-school and in-school programs to Band Councils since 1971-1972, through Indian Act revision, protection was sought for legislatively ensuring the continuation of transfer of programs to Band Councils while retaining federal responsibility for funding of educational services to Indians.

The Joint National Indian Brotherhood/Cabinet Committee operated from 1974 to 1978, when the National Indian Brotherhood unilaterally withdrew from the Joint Committee. A total of four full Joint Committee meetings had been held during that interim, two in 1975 and two in 1977. Only at the latter two meetings had revisions to the education sections of the Indian Act been substantially discussed. In 1976, the National Indian Brotherhood had prepared and submitted proposed revisions to the Indian Act, including proposed revisions to the education sections of that Act. Until July of 1977, no government response to the National Indian Brotherhood's proposed revisions had ensued. Between July and December of 1977, "dialogue" on the issue of education as a Treaty right transpired on all three levels of joint committee interaction, i.e. the full Joint Committee (on July 11 and

December 12), the Joint Sub-Committee (June 27 and October 31) and in the Joint Working Group on Indian Act Revision (September 27, November 4 and several other earlier meetings).

The National Indian Brotherhood's proposed revisions to the education sections of the Indian Act were based on education as a right of Indians; the provision of educational services to Indians residing off-reserve and the unconditional support of Indians enrolled in post-secondary education were presumed. In order to consider the proposed revisions put forth by the National Indian Brotherhood, a policy decision was required as to the nature of the Indian right to education. The full Joint Committee agreed to consider the issue of an Indian right to education at the December 12, 1977, meeting, providing that the Canadian Indian Rights Commission coordinated documentation of the nature of such a right as perceived by Indians and also documented the financial implications of extending educational services to off-reserve Indians. The meeting on December 12 did not resolve the issue of education as a right of Indians; no policy decision was proffered. The provision of educational services to Indians continued to be authorized by virtue of Sections 114 through 123 of the Indian Act and by the subordinate legislation derived thereof for the duration of the timeframe of this study. The national forum, the Joint Cabinet/National Indian Brotherhood Committee structure, failed to function as the vehicle through which substantive change in educational policy for Indians could ensue.

Indian Act revision remained foremost among priorities of the Department of Indian Affairs and Northern Development throughout 1978. In June of 1978, the Department released comprehensive revisions to the Indian Act, including revisions to the education sections of the Act. The Department advocated following the usual method of amending legislation, whereby the proposed revisions would be tabled in the House of Commons and subsequently sent to the Standing Committee on Indian Affairs and Northern Development. The Department anticipated that the Standing Committee would then travel across Canada and, "in consultation" with Indian groups and organizations, suggest modifications to the Department's proposed revisions. The Minister would then determine the final form of the amended legislation to be submitted for House and Senate approval. Several alternative methods for continuing the Indian Act revision process were proffered by the National Indian Brotherhood and by the Opposition in Parliament. However, the tabling of the Bill to Amend the Canadian Constitution by Prime Minister Trudeau in June of 1978, resulted in a shift of focus within the National Indian Brotherhood whereby the urgency of revising the Indian Act diminished in the context of a perceived paramountcy to secure constitutional recognition of aboriginal and Treaty rights of Indians within Canada. The change in government in early 1979 temporarily forestalled any further consideration of the 1978 proposed Indian Act revisions.

The Department of Indian Affairs and Northern Development was a full participant in the joint consultative process embodied by

the Joint National Indian Brotherhood/Cabinet Committee during 1974 through 1978. While the Department actively engaged in exploration of long-range legislative changes to provision of educational services to Indians through this Joint Committee structure, it also perceived the need to facilitate the ongoing transfer of programs to Band management and administration occurring by means of the Contributions to Bands Program. The National Indian Brotherhood had in 1973 envisioned an Indian Education Service to be the coordinating vehicle for transfer of education programs to Band Councils. However, the Department of Indian Affairs and Northern Development determined the operation of such a service to be secondary to the Department's own responsibility for coordinating the transfer of programs to Band Council management. A series of policy guidelines were accordingly initiated to structure local Band government and to structure the transfer of programs to Band Councils. The policy guidelines, in the form of Program Circulars, were released in various draft versions between 1973 and 1975.

The political reaction within the National Indian Brotherhood toward the release of the D-series and E-series guidelines in 1975 was negative; a freeze on implementation of the guidelines was immediately requested by the national Indian organization. The National Indian Brotherhood objected to the release of the D-series and E-series guidelines not because it disagreed with the need for guidelines for accountability purposes, but because it felt that guidelines for structuring local government and for

transferring programs to Band management should be products of joint formulation within the spirit of the federal government's professed policy of "consultation and cooperation." The particular guidelines which were released by the Department in mid-1975 were not perceived by the National Indian Brotherhood to be such instruments of joint consultation and cooperation. The release of the policy guidelines was perceived by the National Indian Brotherhood to violate the policy of participation advocated by the federal government. Some of the policy contained within the various circulars dealt with specific policy areas supposedly still under negotiation in the Joint Committee forum. The National Indian Brotherhood perceived the Department of Indian Affairs and Northern Development to be contravening the federal political stance on "consultation" and "dialogue" with Indians regarding Indian matters; bureaucrats were perceived as undermining the federal policy of participation and partnership. This perception was enhanced by unilateral policy decisions made by the Department during the fiscal restraint period at the end of 1975 which directly impacted provision of educational services to Indian students.

The issue of freezing the Department's guidelines was debated in the House of Commons on June 12, 1975. Many of the E-series guidelines were never formally signed by the Assistant Deputy Minister of Indian Affairs and Northern Development. The education areas encompassed by the E-series guidelines continued to be dealt with inconsistently, regionally and district-wise.

However, the two primary local government program circulars (D-1 and D-4) and the education program circular which pertained directly to education program transfer (E-3) were operational throughout 1975 through 1978. These three program circulars basically structured which programs could be transferred under what conditions and what management and accounting principles had to be adhered to in order for Band Councils to be able to continue to manage or administer the transferred programs. A program circular structuring the provision of educational services to Indians in post-secondary education was formally approved in November of 1977.

A new general policy statement regarding provision of educational services to Indians was released by the Department of Indian Affairs and Northern Development in November of 1978. The National Indian Brotherhood rejected both the 1978 E-1 policy statement and the November 1977 post-secondary education guidelines (E-12). Both circulars were viewed as being devoid of acceptable Indian consultation. At the terminal point of this study, the Department of Indian Affairs and Northern Development was yet viewed by the National Indian Brotherhood as disavowing implementation of educational policy "in partnership" with Indian people.

Implementation of Indian control of Indian education progressed during 1973 through 1978 in a quantitative sense with improvements in many areas of Indian education. However, the goal of making legislative changes in the Indian Act to facilitate

Indian control of Indian education was not reached through the Indian Act Revision Process as incorporated in the terminal Joint Cabinet/National Indian Brotherhood Committee forum. Fundamental substantive issues, such as an Indian right to education, remained unresolved between the Indian Nations and the Canadian government by the end of 1978. Interaction in the sphere of educational policy implementation had been mutually envisioned in 1973 as potentially embracing modes of partnership, consultation, dialogue and cooperation. The Canadian Government, the Department of Indian Affairs and Northern Development and the Indian Nations, as represented by the National Indian Brotherhood, assigned diverse interpretations to the qualitative extent to which those interactional modes actualized during 1973 through 1978.

Conclusions

This study embodied a brief historical interlude (1973 through 1978) of the dynamic relationship between the Canadian Government and the Indian Nations, particularly focusing on their political interaction in the sphere of educational policy implementation. The statement of the problem was defined in a way so as to consider the subject matter in an interactional context; that context was political by nature. Several dimensions of political interaction emerged. Interaction between the National Indian Brotherhood and the federal government was considered through an examination of the Joint Committee process and the subsumed Indian Act revision process. The National Indian

Brotherhood - Department of Indian Affairs and Northern Development interactional sphere was explored primarily in terms of the Department's initiative in structuring local government and in providing parameters for the transfer of education programs to Bands by means of local government and educational program circulars. Department of Indian Affairs and Northern Development - Indian Nations interaction was additionally considered through a description of the evolution of the Cultural/Educational Centres Program. The overall mode of interaction which was mutually anticipated in 1973 to be operative in all of these political dimensions was described with phrases such as "consultation and cooperation", "in dialogue", and "in partnership".

Three aspects of the problem as defined in this study comprise the conclusions drawn by the researcher. These three aspects are: (a) diverse interpretations were given to the phrases "in consultation and cooperation", "in dialogue" and "in partnership" during 1973 through 1978; (b) organizational matters within the National Indian Brotherhood influenced the nature of its interaction with the government in the sphere of educational policy implementation; and (c) other political dimensions and political events impacted the interaction between the federal government/Department of Indian Affairs and Northern Development and the Indian Nations during 1973 through 1978 and affected the quality of interaction in the sphere of educational policy implementation.

In 1973, the President of the National Indian Brotherhood and the Minister of Indian Affairs and Northern Development both envisioned the implementation of educational policy to be a "joint process". Changes in Indian education were to be effected through a process of "consultation" with Indians. Yet, repeatedly throughout 1975-1978, claims and counterclaims regarding the nature of "consultation" in policy implementation were voiced. The 1975 program circulars on local government and education according to the Department were products of consultation with Indians. The National Indian Brotherhood contended that many crucial policy matters discussed in the program circulars had not been discussed with Indian representatives. The 1977 E-12 program circular on post-secondary education, as claimed by the Department, was a product of "Indian consultation"; the National Indian Brotherhood rejected the Treasury Board approved E-12 circular on the grounds that it was not reflective of Indian viewpoints on provision of educational support to Indians in post-secondary education. The 1978 E-1 policy statement included in its introductory section the notation that the circular had been developed jointly by the Department and Indian representatives and was reflective of both Indian and Department viewpoints. (E-1:1) The National Indian Brotherhood rejected the 1978 E-1 on the grounds that it was not representative of Indian views and that no consultation with Indian people or their representatives had occurred in the preparation of the policy statement.¹ These divergent viewpoints regarding "consultation"

in educational policy implementation during 1973-1978 can be interpreted in terms of the difference between consultative "process" and consultative "product".

The government perceived the "joint process" for implementation of educational policy to entail "dialogue" with Indians at various organizational levels and written submissions to the Department on policy issues being made by Indian groups or organizations. The Department presumed a co-ordinating role in the joint process in compiling material exchanged in consultative meetings; compilation of written submissions were invariably written by government representatives. Accordingly, products of consultation incorporated aspects of Indian input to varying degrees, on a continuum of "omission" to "full incorporation". Indian representatives presumed that final drafts would be a synthesis of ideas proffered by government and Indian representatives.² However, during 1973 through 1978, the National Indian Brotherhood perceived the products of consultation to generally cluster near the "omission" end of the continuum. The government could legitimately claim that a process of consultation (dialogue at diverse organizational levels or fielding of written submissions on a particular issue, such as the E-12 guidelines) had been undertaken in many instances. But by equating governmentally contrived final drafts, or "products of consultation", with the consultative process itself, the government often misrepresented the product, policy statement or

policy guidelines as being the result of "consultation with Indians."

The failure to clearly differentiate between the process of consultation and the "products" or results of consultation influenced interaction in the Joint Committee process as well.³ An additional inferential problem manifested itself in the Joint Committee process. The Joint Cabinet/National Indian Brotherhood Committee comprised "pre-cabinet consultation", linking the Executive Council of the National Indian Brotherhood directly to a special group of Cabinet Ministers in the Social Policy Cabinet Committee.⁴ The National Indian Brotherhood presumed the Joint Committee to be a negotiating forum, where decision-making on Indian policy would be a joint effort. The government, on the other hand, viewed the Joint Committee as an "advisory body", with ultimate decision-making remaining the prerogative of Cabinet.⁵ When no decision on the Indian right to education was made at the December 12, 1977, Joint Committee meeting, the National Indian Brotherhood perceived that the government was ultimately unwilling to make substantive changes in educational policy for Indians.

Several organizational aspects of the National Indian Brotherhood impacted the nature of interaction in the sphere of educational policy implementation. Gibbins and Ponting cite seven "organizational problems" of the National Indian Brotherhood during the 1970s.⁶ Three of these organizational aspects directly impinged on Indian participation in implementation of educational policy. A limited talent pool existed within the National Indian

Brotherhood during the 1970s. When the National Indian Brotherhood determined Indian Act revision to be a organizational priority in 1975, personnel and political effort was expended in that endeavor at the expense of coordinating a national-level plan for implementation of Indian Control of Indian Education through the Indian Education Service.⁷

A second organizational aspect of the National Indian Brotherhood during the 1970s was its "struggle for legitimacy" to both its own constituency and to the federal government.⁸ Through the Indian Act Consultative Study, the National Indian Brotherhood endeavored to involve its grassroot level, the Band communities, in the Indian Act revision process. However, Indian Act liaison people repeatedly encountered two situations at the community level: a lack of understanding of the technical aspects of the Indian Act and Band Councils' lack of time to consider legislative revisions in light of the more critical everyday problems, such as housing shortages or unemployment concerns.⁹ Discussion on Indian Act revision that did occur at the community level tended to focus on issues of land, membership and Band powers.¹⁰ Extensive consideration of particular legislative changes to provision of educational services to Indians was not a priority at the community level. Shortage of time and insufficient funding precluded extensive grassroot input into the National Indian Brotherhood's proposed revisions to the Indian Act in 1976-1977.

In terms of legitimizing itself to the federal government as truly representative of its grassroots constituency, the National

Indian Brotherhood faced the structural problem of being composed of elected politicians as opposed to the federally-recognized political voice of Indian peoples, Chief and Band Council. Near the demise of the Joint Cabinet/National Indian Brotherhood Committee, one "influential official" commented that "the government side concluded that NIB did not have any mandate (from the PTOs, the bands, or the Indian people as a whole) to negotiate about anything."¹¹ Adopting this attitude facilitated the rejection of the absolutist position advocated by the National Indian Brotherhood at the final Joint Committee meeting of December 12, 1977, regarding an Indian right to education.

A third organizational aspect of the National Indian Brotherhood which impacted the nature of its participation in implementation of educational policy was its "defensive-reactive character".¹² Gibbins and Ponting state that after the release of the 1969 White Paper, it was necessary for the National Indian Brotherhood to continually be on guard for government proposals or actions which might threaten Indian rights.

Because Indian rights are exposed to the actions of a wide range of departments within both federal and provincial governments, and so long as the non-Indian government is responsible to Parliament for Indian policy, the defensive-reactive character of NIB is unlikely to diminish by much. As long as the tension exists between the Indian quest for special rights and status, and the more general societal hostility to special treatment, vigilance will be needed.¹³

During the timeframe of this study, the National Indian Brotherhood expended a great amount of time and political energy reacting to government initiatives in the educational sphere, such

as the 1975 program circulars on local government and education, the 1977 Treasury Board approved E-12 program circular on post-secondary educational support for Indians, and the 1978 E-1 general policy statement on provision of educational services to Indians. However, government actions in other policy areas required vigilance as well. Foremost among these other government actions were the release of "The Nature of Government-Indian Relations" paper and the leaking of the Cabinet document "Native Policy: A Review with Recommendations" in the summer of 1976. As a result of having to continually react to government activities, the proactive ability of the National Indian Brotherhood was curtailed. National Indian Brotherhood initiatives toward a comprehensive implementation plan for Indian Control of Indian Education were deterred during the timeframe of this study.¹⁴

The final set of conclusions drawn by the researcher center on the other interactional dimensions which were not considered to any great extent in this study. These dimensions of interaction were implicit in the Indian Nations - federal government relationship and consequential to the quality of interaction in the sphere of educational policy implementation during the timeframe of this study. These interactional spheres, or political dimensions, include: federal-provincial politics; bureaupolitik; interdepartmental politics; and Indian-Indian politics, in terms of internal National Indian Brotherhood politics, NIB to Provincial Indian Association politics, and NIB to Band politics.¹⁵ Each of these political dimensions

incorporate essential elements which impacted the nature of the relationship between the National Indian Brotherhood and the federal government in implementation of Indian control of Indian education during 1973 through 1978.

Leadership styles within both the federal government and the National Indian Brotherhood impacted the quality of interaction in the sphere of educational policy implementation. The National Indian Brotherhood had two presidents during the timeframe of this study. George Manuel was President from 1970 to 1976, and Noel Starblanket occupied the Presidency from September 1976 through to the terminal point of this study. Manuel placed more emphasis on the internal development of Indian communities, while Starblanket emphasized the development of technically proficient Indian staff and the building up of the National Indian Brotherhood as an effective national lobby.¹⁶ Each of these Presidents shaped the relationship of the National Indian Brotherhood to its grassroots constituency, at the Band level, according to his perception of the role of the national Indian organization. Manuel presided during an organizationally formative period of the National Indian Brotherhood when it was crucial to demonstrate the legitimacy of a national Indian organization to both its constituency and to the federal government. The development of the policy document Indian Control of Indian Education incorporated a process which reached down to the grassroots level and through the provincial Indian organizations, with the national level serving a coordinative function. Starblanket initiated several structural changes to the

National Indian Brotherhood, such as the creation of the Indian Policy Development Secretariat in 1977, which reflected his concern for more direct Indian input into government policy formulation.

Starblanket became President of the National Indian Brotherhood just weeks after a new Minister had been appointed to the Department of Indian Affairs and Northern Development. During 1973 through 1978, there were four Ministers of Indian Affairs and Northern Development. Jean Chretien served as Minister until August of 1974; Judd Buchanan from August 1974 to September 1976; Warren Allmand from September 1976 to September 1977; and Hugh Faulkner from September 1977 to June 1979.¹⁷ This rapid turnover of Ministers during the timeframe of this study had implications for the continuity in interaction between the National Indian Brotherhood and the government. In addition, each of these Ministers had his own perception of what his relationship, as Minister, should be toward the senior bureaucrats in the Department of Indian Affairs and Northern Development and what his Ministerial impact on policy matters in general should be.¹⁸ As well, the Minister's perception of his Department's monopoly on formulating Indian policy coloured his interaction in the Joint Committee process, especially with Ministers of Departments involved in Indian matters, such as Health and Welfare, and Justice. This interdepartmental political dimension, in turn, impacted Indian interaction in the Joint Committee process.

Thus, perceiving the successive DIAND Ministers as 'stonewalling it' [the Joint Committee] or attempting to act as 'gate-keeper' for Indians vis-a-vis the other Cabinet Ministers, the Indian side (especially Harold Cardinal) responded by attempting to isolate the DIAND Minister from his Cabinet colleagues during the meetings.¹⁹

The interdepartmental political dimension influenced the structuring of the Cultural/Educational Centres Program as well. Philosophical and jurisdictional issues underlay the split off in 1973 of the Department of the Secretary of State as co-administrative agent of the Program.

Within the Department of Indian Affairs and Northern Development, another level of bureaupolitik was operative, the dialectic between the "old guard" and the "new guard".²⁰ Receptivity toward the notion of direct Indian participation in policy formulation were linked to an individual's ideological stance regarding the colonial function of the Department itself. This ideological stance, in turn, influenced the level of sincerity or amount of energy expended by Department personnel toward actualizing an "educational partnership" with Indians at regional and district levels.

The federal-provincial political dimension impacted the nature of interaction between Indian Nations and the federal government in the educational sphere. Provincial tuition and joint school agreements were viewed by the government to be inviolate; policy negated duplication of facilities, even in situations where Bands determined a need for on-reserve schools in order to improve the educational environment of their children.

The government advocated provincial involvement in revisions to the educational sections of the Indian Act, since education was the legislative domain of provinces by virtue of Section 93 of the BNA Act, 1867. The National Indian Brotherhood, on the other hand, rejected the notion of direct provincial involvement in education revisions, since enacting legislation regarding Indians was the exclusive domain of the federal government by virtue of Section 91 Head 24 of the BNA Act, 1867. This overlapping of legislative jurisdictions, embedded in the political context of "cooperative federalism", underlay the federal-provincial political dimension which impacted the interactional sphere of educational policy implementation.

Implementation of Indian control of Indian education during 1973 through 1978 occurred in a multi-dimensional political space. The most visible dimensions comprised this paper; brief descriptions of the less conspicuous dimensions have been presented to provide context to the primary sphere of interaction of government/Department of Indian Affairs and Northern Development - Indian Nations/National Indian Brotherhood. Certain organizational aspects of the National Indian Brotherhood during the 1970s influenced the nature of its interaction in the "joint process" of educational policy implementation. However, the major undercurrent of this era of "educational partnership" was a non-differentiation of consultative processes from consultation products. Though positive change in the education program

occurred in a quantitative sense from 1973-1978, progress in implementation of Indian control of Indian education seemed to have occurred not as a result of "joint consultation" but in spite of it.

CHAPTER SIX ENDNOTES

1. National Indian Brotherhood, National Education Liaison Meeting, February 1979, 1.
2. Leroy Little Bear of University of Lethbridge, interview by author, 13 May 1988, Lethbridge, Alberta, tape recording.
3. Ibid.
4. Sally Weaver, Making Canadian Indian Policy (Toronto: University of Toronto Press, 1980), 202.
5. Ibid., 203; J. Rick Ponting and Roger Gibbins, Out of Irrelevance (Toronto: Butterworths, 1980), 259.
6. Roger Gibbins and J. Rick Ponting, "The National Indian Brotherhood and Native Indian Politics in Canada." Paper presented at the Biennial Conference of the Canadian Ethnic Studies Association, Vancouver, B.C., October 11-13, 1979.
7. Marie Marule of University of Lethbridge, telephone interview by author, 17 May 1988.
8. Gibbins and Ponting, 18-20.
9. Kelly, Peter, "Report of the Indian Act Liaison Worker", presented to the All-Ontario Chiefs Conference, Toronto, Ontario, July 5-8, 1977. In Breakin' Camp, Annual Report of the Indian Act Consultative Study, Ottawa, 1977.
10. Ibid.
11. Ponting and Gibbins, 268.
12. Gibbins and Ponting, 18.
13. Ibid., 17-18.
14. The National Indian Brotherhood did not actively pursue a comprehensive implementation plan for Indian control of Indian education until 1981. (Ward, 1986:14)
15. Ponting and Gibbins, 315.
16. Ibid., 204 and 208.
17. Weaver, 23.
18. Ponting and Gibbins, 172-75.
19. Ibid., 262.
20. Ibid., 315.

APPENDIX 1

INDIAN REPRESENTATION ON PROVINCIAL SCHOOL BOARDS, 1978
(Quoted* from Hansard 8 February 1978:2671-72)

British Columbia: The Public Schools Act of British Columbia, 1972, provides for Indians of B.C. to have full and equal rights with other citizens of that province to participate as representatives or as members of school boards. There is no restriction on the number of Indians who could be elected to a school board. The Minister of Education may order that a rural area, such as a reserve, is deemed to be a ward and can elect a member to a school district board.

Alberta: Presently, reserve residents cannot be members of school boards in Alberta because reserves are not considered to be part of a district, division or county. The province drafted legislation a few years ago which would have enabled reserve residents to participate fully on school boards; however, at the request of the Indian Association of Alberta, the proposed legislation was not enacted into law. Tuition agreements in Alberta contain a clause about Indian representatives attending board meetings; however, the representatives do not have a vote. The Lesser Slave Lake Indian Regional Council (Education Division) which now functions as a school board under the auspices of the federal Department of Indian Affairs and Northern Development, meets with the various provincial school boards where the children of the bands involved attend school.

Saskatchewan: The Larger School Units Act, as amended in 1973, permits the establishing of one or more Indian reserves as a sub-unit attached to a school unit. In the province each sub-unit (usually five in a school unit) is represented on the board by one trustee. This legislation does not apply to city boards, consolidated boards or separate school boards.

Manitoba: Where the Minister of Education receives a written request from a Band Council for the inclusion of a reserve in a School Division, and the Board of Reference grants the request, the reserve becomes a ward of the division. The new ward elects a trustee to the board of the division. As in the case of Saskatchewan, more than one reserve ward could be included in a school division.

Ontario: The Provincial Education Act, 1974, allows for Indian representation on school boards where the board has entered into agreement or agreements with the Department of Indian Affairs and Northern Development. The appointee is named by the band. Where Indian enrolment exceeds 25 per cent, two persons may be named. If agreements are restricted to either elementary or secondary education, the representatives may not vote on issues

outside the area of agreement. Where the Indian enrolment is the lessor of 10 per cent or 100, any appointment of an Indian member is at the discretion of the board. In some cases where numbers have not justified full Indian membership on the board, an Indian liaison person sits with the board in discussions of matters relevant to Indian students.

Quebec: The province of Quebec presently does not recognize Indian reserves or Indian communities on provincial crown land as being part of a municipality. Consequently, Indians are excluded from participation on school boards as trustees or school commissioners. The James Bay Agreement created two school boards in Northern Quebec. The Cree Board is composed of a member from each of the communities plus a representative of the Grand Council of the Crees. The Kativik (Inuit) School Board has a commissioner for each community having up to 500 inhabitants. Those communities having more than 500 inhabitants have an extra commissioner and the Northern Quebec Inuit Association has a representative on the Board. The Indians of Quebec Association has in the past expressed opposition to legislation which would enable reserve residents to serve on school boards.

New Brunswick: The Schools Act (consolidated to 1971) allows for the election of school trustees and their appointment by the Lieutenant Governor in Council. In New Brunswick a resident of a reserve within a school district is considered a resident of that district and may stand for election. With regard to those appointed by the Lieutenant Governor in Council, in practice the Chief and Council nominate a person who is accepted by the Minister of Education. In addition to the foregoing, it is common practice for Indian representatives to meet informally with boards to discuss educational matters.

Nova Scotia: Under the Education Act, 1972, it is apparently accepted that to be appointed to a municipal school board the person must be a resident rate-payer or his spouse. For the legislation to apply to Indians, it would be necessary for a reserve to be recognized as being within a municipality and for the province to accept tuition payments as the equivalent of municipal property taxes. However, under tuition agreements and other less formal arrangements liaison committees have been formed by school boards and reserve education representatives.

Prince Edward Island: There is no existing legislation which refers specifically to Indian representation on school boards.

Newfoundland: Native people are not registered in Newfoundland but people of native ancestry sit on the Integrated Board in Labrador West and on the Labrador R C School Board. Also, a native representative sits on the Humber-St. Barbe R C School Board which manages the Cone River School.

* Paragraph indentations are used by the author for easier identification of particular provinces; no indentations were utilized in Hansard)

Appendix 2

EDUCATION SECTIONS OF THE INDIAN ACT (1970) RSC, c.I-6

114. (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with

- (a) the government of a province,
- (b) the Commissioner of the Northwest Territories,
- (c) the Commissioner of the Yukon Territory,
- (d) a public or separate school board, and
- (e) a religious or charitable organization.

(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children.

115. The Minister may

- (a) provide for and make regulations with respect to standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools;
- (b) provide for the transportation of children to and from school;
- (c) enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations; and
- (d) apply the whole or any part of moneys that would otherwise be payable to or on behalf of a child who is attending a residential school to the maintenance of that child at that school.

116. (1) Subject to section 117, every Indian child who has attained the age of seven years shall attend school.

(2) The Minister may

- (a) require an Indian who has attained the age of six years to attend school;
- (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term; and
- (c) require an Indian who becomes sixteen years of age to attend school for such further period as the Minister considers advisable, but no Indian shall be required to attend school after he becomes eighteen years of age.

117. An Indian child is not required to attend school if the child

- (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school;
- (b) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties;
- (c) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction; or
- (d) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend.

118. Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school conducted under Protestant auspices, except by written direction of the parent.

119. (1) The Minister may appoint persons, to be called truant officers, to enforce the attendance of Indian children at school, and for that purpose a truant officer has the powers of a peace officer.

(2) Without restricting the generality of subsection (1), a truant officer may

- (a) enter any place where he believes, on reasonable grounds, that there are Indian children who are between the ages of seven and sixteen years of age, or are required by the Minister to attend school;
- (b) investigate any case of truancy; and
- (c) serve written notice upon the parent, guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter.

(3) Where notice has been served in accordance with paragraph (2)(c) with respect to a child who is required by this Act to attend school, and the child does not within three days after the service of notice attend school and continue to attend school regularly thereafter, the person upon whom the notice was served is guilty of an offence and is

liable on summary conviction to a fine of not more than five dollars or to imprisonment for a term not exceeding ten days, or to both.

(4) Where a person has been served with a notice in accordance with paragraph (2)(c), it is not necessary within a period of twelve months thereafter to serve that person with any other notice in respect of further non-compliance with the provisions of this Act, and whenever such person within the period of twelve months fails to cause the child with respect to whom the notice was served or any other child of whom he has charge or control to attend school and continue in regular attendance as required by this Act, such person is guilty of an offence and liable to the penalties imposed by subsection (3) as if he had been served with the notice.

(5) A child who is habitually late for school shall be deemed to be absent from school.

(6) A truant officer may take into custody a child whom he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, using as much force as the circumstances require.

120. An Indian child who

(a) is expelled or suspended from school, or
 (b) refuses or fails to attend school regularly,
 shall be deemed to be a juvenile delinquent within the meaning of the Juvenile Delinquents Act.

121. (1) Where the majority of the members of a band belongs to one religious denomination, the school established on the reserve that has been set apart for the use and benefit of that band shall be taught by a teacher of that denomination.

(2) Where the majority of the members of a band are not members of the same religious denomination and the band by a majority vote of those electors of the band who were present at a meeting called for the purpose requests that day schools on the reserve should be taught by a teacher belonging to a particular religious denomination, the school on that reserve shall be taught by a teacher of that denomination.

122. A Protestant or Roman Catholic minority of any band may, with the approval of and under regulations to be made by the Minister, have a separate day school or day school classroom established on the reserve unless, in the opinion of the Governor in Council, the number of children of school age does not so warrant.

123. In sections 114 too 122

"child" means an Indian who has attained the age of six years but has not attained the age of sixteen years, and a person who is required by the Minister to attend school;

"school" includes a day school, technical school, high school and residential school;

"truant officer" includes

- (a) a member of the Royal Canadian Mounted Police,
- (b) a special constable appointed for police duty on a reserve; and
- (c) a school teacher and a chief of the band, when authorized by the superintendent.

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